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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

MINNEAPOLIS, MN

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WHERE: Bishop Henry Whipple Federal Building, Room 570, Ft. Snelling, MN.
RESERVATIONS: 1–800–366–2998

KANSAS CITY, MO

WHEN: June 19, at 9:00 a.m.
WHERE: Federal Building, 601 East 12th Street, Room 110, Kansas City, MO.
RESERVATIONS: 1–800–735–8004

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AD66

Federal Employees Health Benefits Program; Temporary Continuation of Coverage

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement title II of Public Law 100-654, the "Federal Employees Health Benefits Amendments Act of 1988." Title II of Public Law 100-654 adds section 8905a to title 5, U.S. Code, which provides for the temporary continuation of coverage under the Federal Employees Health Benefits (FEHB) Program for (1) Certain employees who separate from Federal service, (2) children of Federal employees and annuitants who lose their status as family members, and (3) certain former spouses of employees and annuitants who would not otherwise be eligible for continued FEHB coverage.

EFFECTIVE DATE: July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 606-0780, extension 207.

SUPPLEMENTARY INFORMATION: On December 21, 1989, OPM issued interim regulations in the **Federal Register** (54 FR 52333) that amended part 890 to implement changes to the FEHB Program made by title II of Public Law 100-654. The interim regulations identified the individuals who are eligible for temporary continuation of FEHB coverage, explained the circumstance of the continued coverage, and revised existing regulations to include this new type of coverage and new type of enrollee in all the appropriate existing provisions.

OPM received comments from two insurance carriers (or their representatives), four Government agencies, one association of carriers, one consulting firm, and one individual.

Three commenters expressed concern about the timeliness of documentation reaching the carrier when individuals enroll under temporary continuation of coverage and when they cancel their enrollment, especially through nonpayment of premiums. One carrier said that retroactive enrollments would increase the cost of processing claims. The law specifies the timeframe during which individuals may enroll and that enrollments received after the 31-day temporary extension of coverage are retroactive to the 32nd day. Any extra and appropriate administrative costs a carrier might incur would be chargeable to the Federal contract; therefore, the carrier itself would suffer no loss. Likewise, any claims erroneously paid as a result of retroactive cancellation or delayed submission of documentation terminating an enrollment are, after an unsuccessful attempt at collection, chargeable to the Federal contract under the same circumstances as uncollectible erroneously paid claims have been chargeable to the Federal contract in the past. Although we are not revising our regulations as a result of these comments, we appreciate the concern about timeliness. We have already provided guidance to agencies to clarify their responsibilities and to encourage timely actions on their part (see FPM Letter 890-40, dated December 27, 1989) and we will issue additional guidance as it appears warranted.

One commenter stated that there would be additional administrative charges for carriers and that they should receive a share of the 2 percent administrative charges. However, all of the administrative work that is unique to this group of individuals—notification of eligibility, billing, collection of premiums, receipt of enrollment changes, and final termination of the enrollment—is performed by employing offices. The carriers have no new role as a result of this legislation. Their responsibilities regarding these enrollees are no different than for any other person enrolled in FEHB. OPM has instructed employing offices to supply the carriers with the date that the 18- or 36-month period of eligibility expires. This insures that carriers have that information available in case they are late in receiving the document that terminates the coverage at the expiration of the enrollment period.

Two commenters objected to the requirement that certified mail be used to notify employees if the employing office does not give the notice directly to the individual. Since most separating employees have some direct contact with other personnel in their office at the time they separate (for example, supervisors or timekeepers) we anticipate few circumstances under which an employing office cannot arrange to have a representative give the notice directly to the employee as a part of the normal exit process. In any case, the cost of certified mail is an administrative cost that may be charged against the 2 percent administrative charge that is applied to premiums. Of course, agencies must be judicious in their use of this money, because they bear any costs over and above 2 percent they collect on enrollments.

Two commenters objected to the provision that former spouses and children who continue enrollment in the employee's or annuitant's employee organization plan could do so without the requirement of membership in the organization. The interim regulations simply extend to former spouses and children the same provision that has long been in place for survivors of deceased employees and annuitants. The law provides for the continuation of health benefits coverage under the same circumstances as existed before the coverage as a family member was lost except for the payment of the full premium plus 2 percent administrative charge. These individuals were not required to be members of the employee organization before they lost coverage as family members; therefore, there is no basis to require multiple memberships in an employee organization within a family when one or more of the family members becomes covered under the temporary continuation of coverage provisions. The membership of the employee or annuitant in the employee organization is sufficient for the continuation of coverage of former family members in the employee organization plan.

One commenter expressed the belief that we are too restrictive in limiting any "centralized collection service" to one sponsored by OPM, which prohibits an agency from contracting out the function of an "employing office." The definition of "centralized collection office" has no effect on agencies' existing authority to contract out certain payroll functions. When an agency delegates its authority through a contract, it is, from OPM's viewpoint, as if the agency itself were performing the function. Special regulatory language is not needed.

However, at the time the regulations were prepared it was not clear what form a "centralized collection service" would take. One option was for OPM to contract for a collection service that other agencies could use if they wished. However, an agency's authority to use an OPM-contracted service was not clear; therefore, we included language in the regulations to cover that possibility. In fact, the centralized collection service is being provided by the Department of Agriculture's National Finance Center (NFC) in New Orleans under cross-servicing agreements that agencies make directly with NFC. OPM's role is purely as a facilitator. Therefore, the language regarding the OPM-sponsored collection service is unnecessary and we are removing it from the regulations. This change in no way affects an agency's authority to contract out for services.

One commenter suggested that we modify our regulation to indicate that the agencies that use NFC's service do not need to keep a health benefits file for each enrollee because NFC will keep the file. This is a matter that should be addressed in the agency's agreement with NFC, not in regulations. OPM does not believe it is generally in the Government's interest to limit the agencies' freedom to decide which of their functions they want NFC to perform.

One commenter stated that the regulations were silent on the eligibility of children of survivor annuitants. In FEHB law and regulations, survivor annuitants are included in the term "annuitant." Since children of annuitants are eligible for temporary continuation of coverage, it is not necessary to separately set out in the regulations the rights of survivor annuitants' children who lose FEHB coverage.

One commenter suggested that we add as a qualifying event "a legal separation if the employee has changed his or her enrollment from self and family to self only" because employees are often unwilling to continue providing health benefits coverage for an estranged spouse. Loss of coverage due to a change in enrollment from self and family to self only is not a qualifying event. Although the law includes legal separation as a qualifying event, it extends temporary continuation of coverage to spouses only if "coverage as a family member would otherwise terminate as a result of a legal separation." Under FEHB, coverage as a family member does not terminate as a result of a legal separation. Therefore, modifying the definition of "qualifying event" as suggested would not affect a spouse's inability to meet the requirement of the law for continuing coverage.

One commenter objected to the provision for considering a separation involuntary when an employee resigns after receiving a notice of the agency's intent to remove, but before the scheduled separation date. The commenter believes that, in cases where gross misconduct is involved, the employee would be less willing to resign after receiving the notice of intent to remove if such resignation would result in loss of the right to temporarily continue health benefits coverage. Therefore, the agency would have to go through time-consuming and costly due process procedures unnecessarily.

OPM expects determinations of gross misconduct to be rare, since the standard for what constitutes gross misconduct is much more severe than the standard for misconduct that warrants removal. However, when an employee commits an offense of such severity that it is considered gross misconduct, it is not reasonable to extend a benefit to him or her after the agency begins removal action that would not be extended when the removal actually occurs. If the agency wants to negotiate with the employee concerning the nature of the separation, it may do so before issuing a notice of its intent to remove the employee.

One commenter recommended that OPM revise the definition of "gross misconduct" to include employees with substance abuse problems. Whether an employee who is removed because of a substance abuse problem can be considered to meet the definition of "gross misconduct" must be determined by the employing agency on a case-by-case basis. OPM does not intend that the definition of "gross misconduct" substitute for the judgment of the appropriate judicial or administrative entity as set forth in 5 CFR 890.1102.

Two commenters have pointed out that former spouses may be eligible for temporary continuation of coverage if they had been covered as family members within 18 months before the marriage dissolved, but do not meet the requirement for coverage under the spouse equity provisions because they do not have a qualifying court order or they remarried before reaching age 55. When a spouse loses coverage before a divorce occurs because the employee changed to self only coverage, the 31-day free extension of coverage may expire before the divorce occurs. If the interim regulations were taken literally, the coverage would be retroactive to a date before the qualifying event (the divorce) occurred. OPM agrees that this outcome was not intended and is amending the interim regulations to clarify that enrollments may not become effective before the date of the qualifying event.

One commenter objected to the provision that allows an individual to change plans when he or she initially enrolls under the temporary continuation of coverage provisions. Under the law, employees and children "may elect continued coverage under (chapter 89)", but are not specifically limited to continued coverage under the plan in which they have been enrolled. The law also provides that anyone who continues coverage under this provision can change plans during open season or based on a change in family status. Loss of status as a family member certainly constitutes a change in family status for the family member losing coverage. Therefore, the qualifying event, which results in the loss of family status, gives children and former spouses the right to change plans as well as continue FEHB coverage.

Although the law does not require OPM to allow former employees to change plans when they initially enroll under the temporary continuation provisions, it does give OPM regulatory authority to provide opportunities for them to change plans. We believe that reason and equity require that our regulations allow former employees to select the least financially damaging continued coverage, since the purpose of the law is to relieve them from a financial burden. In addition, since all other individuals who must pay both shares of the premium may change plans at the same time they elect continued coverage, it is easier administratively to treat all eligible individuals the same.

One commenter recommended that subpart K of the regulations be amended

to include a reference to the employing office's obligation under 5 CFR 890.401(c) to notify enrollees of their right to convert to a nongroup contract at the end of the 18- or 36-month temporary continuation of coverage. We do not believe that it is appropriate to use regulations to remind agencies about their normal responsibilities under FEHB. The notification of the right to convert is preprinted on the Standard Form (SF) 2810, Notice of Change in Health Benefits Enrollment. Therefore, when an employing office issues an SF 2810 terminating an enrollment because of the expiration of the period of eligibility, it automatically notifies the enrollee of the conversion right.

One commenter said that, because of the increase in the premium, continued coverage should include coverage for eligible children until they complete higher education. The law specifies that the temporary continuation of coverage for children can continue no longer than 36 months—OPM has no authority to allow it to extend any further. However, the 36-month continuation means that coverage may be continued up to age 25, a time when most individuals have completed the higher education that they intended to seek.

One commenter recommended revising paragraph (c) of 5 CFR 890.104 (which explains what constitutes an "initial decision" of OPM) to include initial decisions made by other agencies and retirement systems. This is unnecessary because agency decisions are addressed in the preceding paragraph of the regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect, for a limited period of time, former Federal employees and former dependents of Federal employees and annuitants.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is adopting its interim regulations under 5 CFR part 890 published on December 21, 1989 (54 FR 52333), as final rules, with the following changes:

PART 890—[AMENDED]

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Pub. L. 100-654; § 890.803 also issued under sec. 303 of Pub. L. 99-569, 100 Stat. 3190, sec. 188 of Pub. L. 100-204, 101 Stat. 1331, and sec. 204 of Pub. L. 100-238, 101 Stat. 1744; subparts J and K also issued under titles I and II, respectively, of Pub. L. 100-654.

§ 890.101 [Amended]

2. Section 890.101(a) is amended as follows:

a. By removing the definition of "collection service."

b. By amending the definition of "employing office" by removing the last sentence of the introductory text.

c. By amending the definition of "pay period" by removing the last sentence.

3. Section 890.1108 is revised to read as follows:

§ 890.1108 Effective date of coverage.

(a) Except as provided in paragraph (b) of this section, the effective date of coverage is the day after other coverage under this part expires, including temporary extension of coverage under § 890.401 of this part. If an individual registers for temporary continuation of coverage before the expiration of the election period under § 890.1105, but after the temporary extension of coverage expires, coverage is restored retroactively, with appropriate contributions and claims, to the same extent and effect as though no break in coverage occurred.

(b) In the case of a former spouse, the effective date of coverage is the later of—

(1) The date determined under paragraph (a) of this section; or

(2) The date of the divorce or annulment.

§ 890.1111 [Amended]

4. Section 890.1111 is amended by removing the last sentence of paragraph (c)(1).

§ 890.1113 [Amended]

5. In § 890.1113, paragraph (b) is amended by adding a period after "employing office" and removing the remainder of the sentence.

[FR Doc. 90-12899 Filed 6-4-90; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 506

[No. 90-984]

OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision ("Office") is revising 12 CFR part 506 in order to display additional control numbers assigned by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act of 1980, as amended, to information collection requirements contained in the Office's regulations. Such additional control numbers have been added to the table published on December 18, 1989 (54 FR 51739 (Dec. 18, 1989)), and the revised table is published in its entirety for ease of reader reference.

EFFECTIVE DATE: June 5, 1990.

FOR FURTHER INFORMATION CONTACT: John Turner, Management Analyst, Directives Management Division, (202) 906-6840, or Mary J. Hoyle, Paralegal Specialist, Regulations and Legislation Division, Office of Chief Counsel, (202) 906-7135, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Office is amending the table of entries that contains the display of control numbers assigned by OMB to the information collection requirements contained in its regulations, pursuant to the Paperwork Reduction Act, Public Law No. 96-511, 94 Stat. 2812, as amended. The Office is hereby publishing such OMB control numbers in compliance with the requirements of 5 CFR 1320.7.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(a)(2), the Office has determined that this rule is not subject either to the notice and comment or delayed effective date requirements of the Administrative Procedure Act.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply.

Executive Order 12291

Because this rule relates to agency management, the provisions of Executive Order 12291 do not apply.

List of Subjects in 12 CFR Part 506

Paperwork, Reporting and recordkeeping requirements, Collection of information.

Accordingly, the Office hereby amends part 506, subchapter A, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: Sec. 2(a), 94 Stat. 2812, as amended (44 U.S.C. 3501 *et seq.*), 5 CFR 1320.7.

2. Section 506.1(b) is revised to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

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567.20	1550-0042
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Dated: May 30, 1990.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 90-12912 Filed 6-4-90; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 900409-0109]

Notification of Foreign Consignee; Authorization of Reexport

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule clarifies procedures for the U.S. exporter to follow when requesting reexport authorization from the Office of Export Licensing for commodities not yet exported.

First, this rule amends § 774.3 of the Export Administration Regulations by adding an advisory to U.S. exporters to notify the ultimate consignee when the Office of Export Licensing has indicated approval of reexport authorization on a validated export license, and to refrain from shipping when the contemplated reexport has been denied.

Furthermore, in the interest of reducing the paperwork burden on the U.S. exporter, this rule eliminates the notification requirements set forth in § 744.4. The U.S. exporter is no longer required to send specific notice to consignees of certain authorizations to reexport. This does not in any way affect the requirement in § 786.6 for a destination control statement on the bill of lading and commercial invoice.

EFFECTIVE DATE: This rule is effective June 5, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule eliminates a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection had been approved by the Office of Management and Budget under Control Number 0694-0036. Exporters will no longer be required to send specific notice to consignees of certain authorizations to reexport. This rule does not in any way affect the requirement in § 786.6 for a destination control statement on the bill of lading and commercial invoice.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA), (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Patricia Muldonian, Regulations Branch, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 700-799) is amended as follows:

1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985 and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8,

1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 774—[AMENDED]

2. Section 774.3(a)(1) is revised to read as follows:

§ 774.3 How to Request Reexport Authorization.

(1) *Requests for Reexport Authorization for Commodities Not Yet Exported.* (1) At time of license application. If a U.S. exporter knows that a commodity that requires a validated license to be exported from the United States to a certain foreign destination will be reexported to a third destination requiring reexport authorization, such an authorization request shall be included on the license application. The application shall specify the country to which the reexport will be made. If it is stated on an individual export license application that the commodity to be exported is intended for distribution or resale in a country(ies) other than the named country of ultimate destination, authorization for such reexport will be granted or withheld by an appropriate statement on the face of the validated license, as follows:

(i) "Distribution or resale of the commodities listed above is permitted in (*name of country of ultimate destination*) and (*name of other approved countries*)," or

(ii) "Distribution or resale of the commodities listed above is permitted in the country of ultimate destination only."

Exporters are reminded that reexport authorization on an export license application is of no value to the ultimate consignee unless the exporter advises the consignee of the authorization. In addition, when the exporter has knowledge that the shipment will be reexported, and reexport authorization is not granted on the license or authorized under the permissive reexport provisions contained in § 774.2, no shipment may be made under the license until the consignee has agreed to the restriction.

Other methods for obtaining reexport authorization are set forth in the special licensing procedures (see part 773).

* * * * *

§ 774.4 [Removed]

3. Section 774.4 is removed and reserved.

Dated: May 30, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90-12908 Filed 6-4-90; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Clothes Washers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for clothes washers will remain in effect until new ranges are published.

Under the Appliance Labeling Rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the Federal Register if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published. The Commission is today announcing that the ranges published on May 24, 1988, will remain in effect until new ranges are published.

EFFECTIVE DATE: June 5, 1990.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule,[1] pursuant to section 324 of the Energy Policy and Conservation Act of 1975,[2] covering certain appliance categories, including clothes washers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all clothes washers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a clothes washer is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers to report the energy usage of their models annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for clothes washers have been received and analyzed and it has been determined to retain the ranges that were published on May 24, 1988.[4] In consideration of the foregoing, the present ranges for clothes washers will remain in effect until the Commission publishes new ranges for these products.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100-357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

[1] 44 FR 66466, 16 CFR part 305.

[2] Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).

[3] Reports for clothes washers are due by March 1.

[4] 53 FR 16551.

By direction of the Commission.
Donald S. Clark,
Secretary.
[FR Doc. 90-12956 Filed 6-4-90; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 152

[T.D. 90-44]

Application of Criteria Utilized in Determining the Eligibility of Planetaria for Duty-Free Admission Under Subheading 9812.00.20, HTSUSA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretative rule.

SUMMARY: This document gives notice of a change in Customs application to planetaria of the criteria for duty-free admission as articles imported for exhibition by a qualifying institution or State or municipal corporation under subheading 9812.00.20, Harmonized Tariff Schedule of the U.S. Annotated (HTSUSA). Customs has permitted the duty-free admission of planetaria under item 862.10, Tariff Schedules of the U.S. (TSUS), the predecessor in the TSUS of subheading 9812.00.20, even though planetaria are usually imported for the purpose of making presentations rather than serving as the exhibit to be viewed. Planetaria now will not ordinarily qualify for duty-free admission, under subheading 9812.00.20, if they are to be utilized for the making of presentations or demonstrations.

EFFECTIVE DATE: This decision will be effective as to merchandise entered, or withdrawn from warehouse for consumption, on or after July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Paul G. Hegland, Commercial Rulings Division, Office of Regulations and Rulings, (202) 566-5856.

SUPPLEMENTARY INFORMATION:

Background

In connection with a request for a ruling on the duty-free entry of a planetarium projector for a university, Customs has reviewed its application of the criteria for determining the applicability of item 862.10, TSUS, to planetaria. Customs published notice in the **Federal Register** on November 18, 1988 (53 FR 46625), proposing a change in its application of these criteria with regard to planetaria and inviting public comments on the proposed change. Three (3) comments were received in response to the notice.

Until replacement of the TSUS by the HTSUSA on January 1, 1989, item 862.10, TSUS, provided for the duty-free entry of articles for permanent exhibition under bond when they are imported by certain types of organizations or for any State or municipal corporation for exhibition. Headnote 1 of part 5B, Schedule 8, TSUS, which covered articles for permanent exhibition under bond, including item 862.10, stated that the provisions therein "do not apply to articles intended for sale or for any purpose other than exhibition or erecting a public monument * * *." Item 862.10 was similar to predecessor provisions dating back at least as far as 1897 (paragraph 702, Tariff Act of 1897) in providing duty-free entry for exhibition of works of art and similar articles.

Over the years Customs has used certain criteria to determine the eligibility of an article for duty-free entry under item 862.10, TSUS. These criteria, as set forth in Treasury Decision (T.D.) 78-420, published in 12 Cust. Bull. 929, are:

(1) The article must be imported for exhibition itself, another use of it can only be incidental;

(2) The article must be imported by the institution itself or its agent; and

(3) Admission to view the article can be charged only to defray expenses and the article cannot be used in connection with a commercial venture.

In our review of this matter, we found that the application of these criteria to planetaria has not been consistent with that to other articles. The regular use of the planetaria has been considered to be part of the exhibition of the planetaria, apparently because it has been felt that use of the planetaria was necessary for a full and effective demonstration of them. This concept has not been applied to other similar articles. For example, a concert organ to be installed in a music hall was considered as a musical instrument and primarily utilitarian rather than an exhibition object.

We noted, in our review, that planetaria are usually purchased for the purpose of making presentations rather than serving as an exhibit to be viewed. We noted that the institutions importing planetaria and seeking duty-free entry appear to be using the planetaria primarily for research, teaching, testing or classroom study. The primary reason persons attend a "star show" or other planetarium presentation appears to be to view the pictures, images, lights, sounds, etc., produced by the planetarium rather than viewing the planetarium itself. This is so even though the planetarium may be on view during such presentations.

Based on the above-described review of this matter, we concluded that the criteria described in T.D. 78-420 should be applied in the same manner to all articles, including planetaria, for which duty free entry is sought under item 862.10, TSUS. Customs gave notice of its intention to change the treatment of planetaria under item 862.10 in the November 18, 1988, **Federal Register** notice. In that proposal, we stated that planetaria which are to be utilized for the making of presentations or demonstrations would normally be considered as being imported for that purpose. The observation of the planetaria, in connection with these presentations or demonstrations, would be considered as incidental to the purpose for which they were imported.

Since publication of the November 18, 1988, **Federal Register** notice, the TSUS has been replaced by the HTSUSA.The subheading of the HTSUSA corresponding to item 862.10, TSUS (subheading 9812.00.20, HTSUSA) and the note of the HTSUSA corresponding to headnote 1 of Part 5B, Schedule 8, TSUS (U.S. Note 1 to Subchapter XII, HTSUSA) are substantively unchanged. When nomenclature in the TSUS remains unchanged in the HTSUSA, administrative decisions under the TSUS are to be considered instructive in interpreting the HTSUSA on a case-by-case basis (House Conference Report on H.R. 3, Omnibus Trade and Competitiveness Act of 1988, 100th Cong., 2d Sess., H. Conference Report No. 100-576; see 134 Cong. Rec. H2021 (daily ed. April 20, 1988)). On this basis, we proceeded with our review of the applicability of subheading 9812.00.20, HTSUSA, to planetaria on the same basis as our review of the applicability of item 862.10, TSUS, to planetaria, discussed above and in the November 18, 1988, **Federal Register** notice.

Summary of Comments

Of the three (3) comments received, one (1) favored the proposed change and two (2) opposed the change. The commenter favoring the proposal, a domestic manufacturer of planetaria, asserts that the duty-free importation of planetaria as "exhibits" puts it in an unfair position in competition for planetaria projects in the U.S.

Of the commenters opposing the change, one contends that planetaria are of special interest to persons viewing a planetarium presentation, that "the projection of images or lights by a planetarium is coincident with the exhibition of the projector *per se*",

rather than the exhibition of the planetarium being incidental to the presentation of images or lights. This commenter distinguishes planetaria from articles such as the concert organ described in the November 18, 1988, **Federal Register** notice on the basis that, the commenter claims, during planetarium presentations viewers ask questions about the planetarium and the lecturer will often discuss it. Further, many persons visit a planetarium to see it and hear a lecture about it without seeing a planetarium show.

The other commenter opposing the proposal, a Canadian exporter of large format motion picture projection systems, also contends that its system is often of special interest to viewers of presentations utilizing the system because the system is unique. The commenter states that it has no direct competitors in the U.S. Further, the commenter states that many of its systems are purchased by institutions which receive public funding and that it would be consistent for the Government to support these institutions by allowing importation of the systems on a duty-free basis.

Analysis of Comments

The commenter supporting the proposal provides no evidence to support its allegation that the current practice results in unfair competition for it with regard to planetaria projects in the U.S. In the absence of such supporting evidence, we do not consider this comment relevant to the proposed change.

The contentions by the second commenter opposing the proposal that it has no direct competition in the United States and that, since many of the institutions which purchase its systems are supported by public funding, the Government should allow duty-free admission of its systems also are not considered relevant to the proposal. These considerations are not provided for in the tariff provision and cannot be dispositive of the proposal.

We are unconvinced by the arguments of the commenters opposing the proposal that planetaria are imported for the purpose of being exhibited, rather than being used in the presentation of exhibited material. Descriptive material submitted by the commenters describes or illustrates specially built dome-shaped theaters and special screens and special films for use with the planetaria or special projection systems. These theaters and screens are specially constructed for exhibition of the materials *projected* by the planetaria. If the planetaria were only to be exhibited, there would be no necessity for the special construction of uniquely shaped theaters and screens, or for the purchase of special films for projection by them. We conclude that planetaria are imported to be used for the function for which they are designed, i.e., to project astronomical programs for such things as popular-science performances in public observatories, museums, and tourist and recreational centers and to be used as a training and teaching aid in astronomy and navigation.

As stated above, in interpreting subheading 9812.00.20, HTSUSA, Customs has held that the article for which duty-free entry is sought must itself be imported for exhibition; another use of it may only be incidental. The legislative history and stated Congressional intent for the predecessors of subheading 9812.00.20 strongly support this interpretation. (See the Act of September 14, 1959; 73 Stat. 549, consolidating several duty-free provisions into paragraph 1809 of the Tariff Act of 1930, the immediate predecessor of item 862.10, TSUS (paragraph 1809 was not intended to be substantively changed when succeeded by item 862.10; see vol. 2, *Tariff Classification Study, Explanatory Notes* (1960), p. 698). See also, Senate Finance Comm. Rep., *Tourist Literature—Works of Art, Etc.—Importation*, Sen. Rep. No. 695, 86th Cong. 1st Sess. (1959), printed at 1959 U.S.C.C.A.N. 2525.) The published decisions interpreting the predecessors of subheading 9812.00.20 are also consistent with this interpretation (see vol. 1, *Digest of Customs and Related Laws and of Decisions Thereunder*, pp. 1127–1129).

The Customs rulings permitting the duty-free entry of planetaria imported to be used to project or exhibit programs are inconsistent with Customs interpretation of the predecessors of subheading 9812.00.20, HTSUSA. This interpretation by Customs is consistent with the legislative history and Congressional intent described above, as well as published decisions interpreting the predecessors of subheading 9812.00.20. Accordingly, we have reached the following decision.

Decision

After careful analysis of the submitted comments and further review of this matter, the proposed change in the application of the criteria used in determining eligibility for duty-free admission under the tariff provision now in subheading 9812.00.20, HTSUSA, with regard to planetaria is adopted. Planetaria which are to be utilized for the making of presentations or demonstrations will normally be considered as being imported for that purpose. Such planetaria will not be eligible for duty-free admission as articles imported for exhibition by a qualifying institution or State or municipal corporation under subheading 9812.00.20. Only if planetaria are imported primarily for exhibition themselves (e.g., because they are of historical value), could they qualify for duty-free admission under subheading 9812.00.20, provided other requirements for such admission are met.

Approved: May 29, 1990.

Michael H. Lane,

Acting Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 90-12910 Filed 6-4-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PART 74

[Docket No. 82C-0399]

Listing of Color Additives for Coloring Contact Lenses; D&C Red No. 17

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Red No. 17 for coloring contact lenses. This action is in response to a petition filed by Polymer Technology Corp.

DATES: Effective July 6, 1990, except as to any provisions that may be stayed by the filing of proper objections; written objections by July 5, 1990.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of January 28, 1983 (48 FR 4051), FDA announced that a color additive petition (CAP 3C0163) had been filed by Polymer Technology Corp., 33 Industrial

Way, Wilmington, MA 01887, proposing that the color additive regulations be amended to provide for the safe use of D&C Red No. 17 for coloring contact lenses. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

II. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive comes in contact with the body for a significant period of time (21 U.S.C. 376(a)). In the case of the use of D&C Red No. 17, the color additive is added to contact lenses in such a way that at least some of the additive will come in contact with the eye when the lenses are worn. In addition, the lenses are intended to be placed in the eye for several hours a day each day for 1 year or more. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

III. Determination of Safety

A. Legal Standard

Under section 706(b)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376(b)(4)), the so-called "general safety clause," a color additive cannot be listed for a particular use unless a fair evaluation of the data establishes that the color additive is safe for that use. Under FDA regulations (21 CFR 70.3(i)), a color additive is safe if there is convincing evidence that establishes with reasonable certainty that no harm will result from the proposed use of an additive.

In addition, the anticancer or Delaney clause of the Color additive Amendments (section 706(b)(5)(B) of the act) provides that a noningested color additive shall be deemed unsafe and shall not be listed if, after tests that are appropriate for evaluating the safety of the additive for such use, it is found to induce cancer in man or animal.

B. Exposure to the Color Additive

From the data submitted and other relevant information, FDA concludes that the upper limit of exposure to D&C Red No. 17 from its use in coloring contact lenses is 280 nanograms per day. The agency calculated this upper limit of exposure based on the following factors. First, based on general worst-case information, FDA estimated that maximum use level of D&C Red No. 17 is 50 micrograms per lens (Ref. 1). Second, the agency made two worst-case assumptions: (1) That a user will replace lenses tinted with D&C Red No. 17 once each year with a new pair of lenses tinted with D&C Red No. 17 at the maximum use level, and (2) that 100 percent of the color additive migrates from these lenses into the eye over the 1-year period. Because these assumptions represent the worst case, exposure to D&C Red No. 17 from its use for coloring contact lenses is likely to be far less than 280 nanograms per day.

C. Toxicology

When presented with a substance whose use will result in the extremely low levels of exposure like those that the agency estimates from the use of D&C Red No. 17 in contact lenses, FDA does not ordinarily consider chronic toxicity testing to be necessary to determine the safety of the color additive's use (Ref. 2). Therefore, FDA did not require additional chronic testing to supplement chronic tests submitted in support of earlier listings of D&C Red No. 17. However, FDA has reviewed the in vitro cytotsxicity studies, ocular and interocular irritation studies in rabbits, and acute toxicity studies in mice submitted by the petitioner. These new studies showed no ocular irritation from the lens extracts and no adverse effects in the in vitro cytotoxicity testing.

Chronic feeding studies and a life-time skin painting study in mice, used to originally list D&C Red No. 17, show no indication of carcinogenicity.

D. Carcinogenic Impurities

1. 4-Aminoazobenzene

Although D&C Red No. 17 itself is not shown to cause cancer, specifications for the color additive in 21 CFR 74.1317 contain a limitation of not more than 0.1 percent for 4-aminoazobenzene, a possible carcinogenic impurity. FDA records show that this impurity has never been detected in any batch of D&C Red No. 17 certified by FDA.

FDA has previously discussed in detail the carcinogenicity of 4-aminoazobenzene in the agency's final rule listing FD&C Yellow No. 6 (51 FR 41765 at 41776; November 19, 1986). As stated in that document, 4-aminoazobenzene is carcinogenic when administered in the diet of Wistar rats, causing liver cell neoplasms and stomach papillomas, and is carcinogenic when applied dermally to rats.

A study implicating 4-aminoazobenzene as a carcinogen by dietary administration to Wistar rats was reported by Kirby et al. (Ref. 3). The study reported that 7 of the 16 animals in the treated group were found to have liver cell neoplasms after a total of 120 weeks of exposure. Six rats in this group displayed papillomas of the stomach. No information is available to determine whether any of the individual rats had neoplasms in both the liver and the stomach. Although the dose was allowed to vary throughout the experiment, the Center for Food Safety and Applied Nutrition's Qualitative Risk Assessment Committee calculated the average dose over 120 weeks to be 0.25 percent in the diet (Ref. 4).

4-Aminoazobenzene was also implicated as a carcinogen in a skin painting study in which 1.0 milliliter of a 0.2-percent acetone solution containing 4-aminoazobenzene (corresponding to a dose of 2.0 milligrams of 4-aminoazobenzene per application) was applied to the skin twice weekly on six male albino rats as part of a larger study utilizing a number of azo compounds (Ref. 5). All six male rats in the treatment group displayed skin neoplasms after 123 weeks compared to none in the control group.

2. Aniline

Specifications for D&C Red No. 17 in 21 CFR 74.1317 also contain a limitation of not more than 0.2 percent for aniline, another carcinogenic impurity. FDA discussed in detail the carcinogenicity of aniline in the agency's November 19, 1986, final rule listing FD&C Yellow No. 6. As stated in that document, aniline is a carcinogen by dietary administration to both rats and mice, causing spleen tumors.

Data reported by the National Cancer Institute demonstrated that aniline was carcinogenic to the spleen of Fischer 344 rats (Ref. 6). This finding was subsequently verified by a dietary study performed by the Chemical Industry Institute of Toxicology (CIIT) using the same strain of rat (Ref. 7). FDA used data from the CIIT study to estimate the lifetime risk of cancer from aniline, if it were present at the limit specified in 21 CFR 74.1317.

3. Prior Action

In the past, FDA refused to list a color additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that scientific developments and experience with risk assessment procedures make it possible for FDA to establish the safety of an additive that contains a

carcinogenic chemical, but that has not itself been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent. Since that decision, FDA has approved the uses of several other color additives that contain carcinogenic impurities, including the use of D&C Green No. 6 for coloring contact lenses (48 FR 13020; March 29, 1983), and the use of D&C Green No. 5 (47 FR 24278; June 4, 1982), and of D&C Red No. 6 and D&C Red No. 7 (47 FR 57661; December 28, 1982) for coloring drugs and cosmetics.

The agency now considers the Delaney clause to be applicable only when the color additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, is properly evaluated under the general safety clause of the statute, using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical, but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

4. Risk Assessment

Using risk assessment procedures to estimate the upper limit lifetime risk presented by the use of D&C No. 17, with its possible impurities, to color contact lenses, the agency has concluded that the additive is safe under the proposed conditions of use (Ref. 8). The risk assessment consists of two parts: (1) Estimation of exposure to 4-aminoazobenzene and aniline from the use of D&C Red No. 17 to color contact lenses, and (2) extrapolation of the risk from 4-aminoazobenzene and aniline observed in the bioassays of those substances to the conditions of exposure in humans.

E. Exposure

As explained above, FDA estimated that the maximum level of exposure to D&C Red No. 17 from its use in coloring contact lenses is 280 nanograms per day. Under the current specifications for D&C Red No. 17, the level of 4-aminoazobenzene and aniline in the color additive is not to exceed 0.1 percent and 0.2 percent, respectively. Thus, the maximum exposure from these impurities that could result from the daily use of contact lenses that are colored with D&C Red No. 17 are 0.015 nanogram per day and 0.03 nanogram per day, respectively.

F. Risk Extrapolation

FDA has estimated the risk from the 4-aminoazobenzene and aniline impurities from the use of D&C Red No. 17 for coloring contact lenses based upon the assumption that the impurities are present at the maximum level permitted by the color additive regulation. The risk for 4-aminoazobenzene was estimated by extrapolating from the risk observed in the Kirby et al., animal study to the very low levels of estimated exposure for humans; the risk for aniline was estimated from the risk observed in the CIIT-sponsored animal studies.

In these extrapolations, the agency used a quantitative risk assessment procedure (linear proportional model) similar to the methods used to examine the risk associated with the presence of minor carcinogenic impurities in D&C Green No. 6 and the other color additives mentioned above. This procedure is not likely to underestimate the actual risk from the very low doses. In fact, the estimate of the risk may be exaggerated because the models used are designed to estimate maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the use of this color additive.

Based on this risk assessment procedure and a worse-case daily exposure estimate of 0.015 nanograms of 4-aminoazobenzene, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to 4-aminoazobenzene from the use of D&C Red No. 17 is $2X10^{-7}$ or 2 in 10 million. Also based on this risk assessment procedure and a worse-case daily exposure estimate of 0.03 nanogram, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to aniline from the use of D&C Red No. 17 is $2X10^{-10}$ or 2 in 10 billion. Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 4-aminoazobenzene and aniline is expected to be substantially less than the estimated daily exposure and therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to 4-aminoazobenzene and aniline that might result from the proposed use of the color additive.

G. Specifications

Based on the low level of exposure to 4-aminoazobenzene and aniline that could result from current specifications for D&C Red No. 17, the agency concludes that these specifications are adequate to assure the safe use of the color additive and to control the amount of 4-aminoazobenzene and aniline that could exist as impurities in the color additive when used in contact lenses. Therefore, the agency concludes that it is not necessary to amend the current specifications for this color additive when it is used to color contact lenses.

IV. Conclusion

Based on the available toxicity data, the small amount of color additive added to the contact lens, the agency's exposure calculation, and the low risk from the possible presence of the impurities, FDA finds that the color additive D&C Red No. 17 is safe and suitable for use in contact lenses. FDA further concludes that no limitation on the amount of the color additive D&C Red No. 17 in the lens is required, except the general requirement that the use level not exceed the amount necessary to accomplish the intended technical effect.

V. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated July 22, 1988, from the Food and Color Additives Review Section, to the Indirect Additives Branch, "CAP 3C0163-Polymer Technology Corp., D&C Red No. 17 for Use in Coloring Contact Lenses."

2. Kokoski, C.J., "Regulatory Food Additive Toxicology" in Chemical Safety Regulation and Compliance, edited by F. Hamburger, J.K. Marquis, and S. Karger, New York, pp. 24–33, 1985.

3. Kirby, A. H. M. et al., "The Induction of Liver Tumor by 4-Aminoazobenzene and *N,N*-Dimethyl Derivative in Rats on a Restricted Diet," Journal of Pathology and Bacteriology, 59:1–18, 1947.

4. Memorandum, Quantitative Risk Assessment Committee, "Report of the Committee on 4-Aminoazobenzene (Dietary and Skin Exposure)," CAP 8C0068, December 20, 1983.

5. Fare, G., "Rat Skin Carcinogenesis by Topical Application of Some Azo Dyes," Cancer Research, 26:2406, 1966.

6. "National Cancer Institute, "Bioassay of Aniline Hydrochloride for Possible Carcinogenicity," NCI Technical Report No. 130, NCI–CG–TR–130, 1978.

7. Chemical Industry Institute of Toxicology, Research Triangle Park, NC, "104 Week Chronic Toxicity Study in Rats: "Aniline Hydrochloride," Final Report, January 4, 1982.

8. Report of the Quantitative Risk Assessment Committee, "Upperbound Risk from Aniline and 4-Aminoazobenzene in CAP 3C0163," June 23, 1989.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before July 5, 1990 file with the Dockets Management Branch written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376).

2. New § 74.3230 is added to subpart D to read as follows:

§ 74.3230 D&C Red No. 17.

(a) *Identity and specifications.* The color additive D&C Red No. 17 shall conform in identity and specifications to the requirements of § 74.1317(a)(1) and (b).

(b) *Uses and restrictions.* (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lens in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of section 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the color additive is used.

(c) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Red No. 17 shall be certified in accordance with regulations in part 80 of this chapter.

Dated: May 29, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–12930 Filed 6–4–90; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 178

[Docket No. 89F–0179]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4,4′-bis(α,α′-dimethylbenzyl)diphenylamine as an antioxidant in polypropylene intended for food-contact use. This action responds to a petition filed by Uniroyal Chemical Co., Inc.

DATES: Effective June 5, 1990; written objections and requests for a hearing by July 5, 1990.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of June 7, 1989 (54 FR 24425), FDA announced that a petition (FAP 7B4019) had been filed by Uniroyal Chemical Co., Inc., World Headquarters, Middlebury, CT 06749, proposing that § 178.2010 Antioxidants and/or stabilizers for polymers (21 CFR 178.2010) be amended to provide for the safe use of 4,4′-bis(α,α′-dimethylbenzyl)diphenylamine as an antioxidant for polypropylene intended for food-contact use.

FDA, in its evaluation of the safety of this additive, reviewed the safety of both the additive and the starting materials used to manufacture the additive. Toxicology data are not available to implicate 4,4′-bis(α,α′-dimethylbenzyl)diphenylamine as a cancer-causing chemical. However, aniline and 4-aminobiphenyl, which could be present as impurities in the additive, have been shown to cause cancer in test animals. Residual amounts to reactants and byproducts, such as these chemicals, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act

(the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additive Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(C)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals as trace impurities. An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the Federal Register of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer even though it contained a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use of 4,4'-bis(α,α'-dimethylbenzyl)diphenylamine will result in extremely low levels of exposure of this additive. The agency has calculated an estimated daily intake of 4,4'-bis(α,α'-dimethylbenzyl)diphenylamine based on considerations such as the migration of the additive under the most severe intended use conditions and the probable concentration of the additive in the daily diet from food-contact articles that contain this substance. The estimated daily intake for the additive is 7.2 micrograms per day (2.4 parts per billion in the diet).

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2) and has not required such testing here. However, the agency has reviewed available acute oral rat and Ames mutagenicity data for the additive. These data provided no evidence that the additive is toxic or mutagenic. On the basis of these data and of the low level of migration of the additive, the agency concludes that there is an adequate margin of safety for the proposed use of the additive.

FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemicals that may be present as impurities in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018 and 13019; April 2, 1984). This risk evaluation of the carcinogenic impurities aniline and 4-aminobiphenyl has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

A. Aniline

Based on the fraction of the daily diet that may be in contact with surfaces containing 4,4'-bis(α,α'-dimethylbenzyl)diphenylamine and on the level of aniline that may be present in the additive (Ref. 3), FDA estimated the hypothetical worst-case exposure to aniline from the petitioned use of this additive to be 81 nanograms per day. The agency used data in a carcinogenesis bioassay on aniline (Ref. 4) to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of 4,4'-bis(α,α'-dimethylbenzyl)diphenylamine. The results of the bioassay on aniline demonstrated that the material was carcinogenic for male rats under the conditions of the study, inducing fibrosarcoma, stromal sarcoma, capsular sarcoma, hemangiosarcoma, and osteogenic sarcoma of the spleen.

FDA reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on aniline. The agency further concluded that the aniline bioassay provided the appropriate basis on which to calculate an estimate of the upper-bound level of lifetime human risk from potential exposure to aniline stemming from the proposed use of 4,4'-bis(α,α'-dimethylbenzyl)diphenylamine. The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst-case exposure of 81 nanograms per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to aniline from the proposed use of 4,4'-bis(α,α'-dimethylbenzyl)diphenylamine is 7×10^{-10}, or less than 1 in 1.4 billion (Ref 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to aniline is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound risk would

be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to aniline that might result from the proposed use of 4,4'-bis(α,α'-dimethylbenzyl)diphenylamine.

B. 4-Aminobiphenyl

Based on the fraction of the daily diet that may be in contact with surfaces containing 4,4'-bis(α,α'-dimethylbenzyl)diphenylamine and on the level of 4-aminobiphenyl that may be present in the additive (Ref. 3), FDA estimated the hypothetical worst-case exposure to 4-aminobiphenyl from the petitioned use of this additive to be 41 nanograms per person per day. The agency used data in a carcinogenesis bioassay on 4-aminobiphenyl conducted both by Block et al. and by Rippe et al. (Refs. 6 and 7), to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of 4,4'-bis(α,α'-dimethylbenzyl)diphenylamine. The results of these bioassay on 4-aminobiphenyl demonstrated that this material was carcinogenic for female dogs under the conditions of the studies, causing papilloma of the bladder.

FDA reviewed the bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 4-aminobiphenyl. The agency further concluded that the 4-aminobiphenyl bioassay provided the appropriate basis on which to calculate an estimate of the upper-bound level of lifetime human cancer risk from potential exposure to 4-aminobiphenyl.

Based on a worst-case exposure of 41 nanograms per person per day, FDA estimates, using a linear proportional model, that the upper-bound limit of individual lifetime risk from potential exposure to 4-aminobiphenyl from the proposed use of 4,4'-bis(α,α'-dimethylbenzyl)diphenylamine is 2×10^{-7} or less than 2 in 10 million (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 4-aminobiphenyl is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to 4-aminobiphenyl that might result from the proposed use of 4,4'-bis(α,α'-dimethylbenzyl)diphenylamine.

III. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of the aniline and 4-aminobiphenyl in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the levels at which aniline and 4-aminobiphenyl are used in production of the additive, the agency would not expect these impurities to become components of food at other than extremely small levels. (2) The upper-bound limit of lifetime risk from exposure to these impurities, even under worst-case assumptions, is very low, less than 1 in 1.4 billion and 2 in 10 million for aniline and 4-aminobiphenyl, respectively.

IV. Conclusion of Safety

FDA has evaluated the available toxicity and other relevant data and concludes that the proposed use for the additive is safe, and that 21 CFR 178.2010(b) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Program" in "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, July 1979, p. 59.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," presented at the Second International Conference on Safety Evaluation and Regulation of Chemicals, October 24, 1983, Cambridge, MA.

3. Memorandum dated October 21, 1988, from Food and Color Additives Review Section (HFF-415) to Indirect Additive Branch, FAP 7B4019—Uniroyal Chemical Co. Exposure Estimates for Aniline and 4-Aminodiphenyl.

4. Chemical Industry Institute of Toxicology-Research, Triangle Park, NC., "104-Week Chronic Toxicity Study in Rats: Aniline Hydrochloride," final report, January 4, 1982.

5. Report of the Quantitative Risk Assessment Committee, "Estimation of Upper Bound Risks for Aniline and 4-Aminobiphenyl from Proposed Uses in FAP 7B4019," February 14, 1989.

6. Block, N. L. et. al., "The Initiation, Process and Diagnosis of Dog Bladder Cancer Induced by 4-Aminobiphenyl," Investigative Urology, 16:50–54, 1978.

7. Rippe, D. F. et al., "Urinary Bladder Carcinogenesis in Dogs: Preliminary Studies on Cellular Immunity." Transplantation Proceedings, 7:495–501, 1975.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before July 5, 1990, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.2010 is amended in paragraph (b) by alphabetically adding a new entry to the table to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* *
4,4'-Bis(α,α-dimethylbenzyl)diphenylamine (CAS Reg. No. 10081-67-1).	For use at levels not to exceed 0.3 percent by weight of polypropylene complying with § 177.1520(c) of this chapter. The polypropylene articles are limited to use in contact with non-fatty foods only.
* * *	* *

Dated: May 29, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-12931 Filed 6-4-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Tax Division Directive No. 82]

Redelegation of Authority To Compromise and Close Civil Claims

AGENCY: Tax Division, Department of Justice.

ACTION: Final rule.

SUMMARY: This directive increases the authority of the Attorney-in-Charge of the Dallas Field Office in accepting offers in compromise from $10,000 to $25,000. Under this new directive, the Attorney-in-Charge of the Dallas Field Office can accept offers in compromise in all civil cases in which the amount of the Government concession, exclusive of statutory interest, does not exceed $25,000. This directive supersedes Tax Division Directive No. 54.

DATES: June 5, 1990.

FOR FURTHER INFORMATION CONTACT: Milan Karlan, Tax Division, Department of Justice, Washington, DC 20530 (202) 724-6567.

SUPPLEMENTARY INFORMATION: This directive increase the authority of the Attorney-in-Charge of the Dallas Field Office in accepting offers in compromise from $10,000 to $25,000. Because of an increase in the value of claims arising under the jurisdiction of the Dallas Field Office, it has become necessary in the interest of efficient management of the Department to increase the settlement authority of the Attorney-in-Charge of the Dallas Field Office. Under this new directive, the Attorney-in-Charge can accept offers in compromise in all civil cases in which the amount of the Government concession, exclusive of statutory interest, does not exceed $25,000. This directive supersedes Tax Division Directive No. 54.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This regulation is not a major rule within the meaning of Executive Order 12291. Therefore a regulatory impact analysis has not been prepared. Finally, this regulation does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 0

Authority delegations.

Accordingly, 28 CFR part 0 is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 3103; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001-2017p; Pub. L. No. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

Directive No. 54 [Removed]

2. Tax Division Directive No. 54 is removed.

3. Tax Division Directive No. 82 is added to read as follows:

[Directive No. 82]

By virtue of the authority vested in me by part 0 of title 28 of the Code of Federal Regulations, particularly sections 0.70, 0.160, 0.162, 0.164, 0.166, and 0.168, it is hereby ordered as follows:

Section 1. The Chiefs of the Civil Trial Sections, the Claims Court Section, the Appellate Section, the Office of Special Litigation, and the Attorney-in-Charge of the Dallas Field Office are authorized to reject offers in compromise, regardless of amount, provided that such action is not opposed by the agency or agencies involved.

Section 2. Subject to the conditions and limitations set forth in Section 8 hereof, the Chiefs of the Civil Trial Sections, the Claims Court Section and the Office of Special Litigation are authorized to.

(A) Accept offers in compromise in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $200,000,

(B) Approve administrative settlements not exceeding $100,000, exclusive of statutory interest,

(C) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $100,000,

(D) Accept offers in compromise in injunction or declaratory judgment suits against the United States in which the principal amount of the related liability, if any, does not exceed $200,000, and

(E) Accept offers in compromise in all other nonmonetary cases,

provided that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 3. Subject to the conditions and limitations set forth in Section 8 hereof, the Chief of the Appellate Section is authorized to:

(A) Accept offers in compromise with reference to litigating hazards of the issues on appeal in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $200,000,

(B) Accept offers in compromise in declaratory judgment suits against the United States in which the principal amount of the related liability, if any, does not exceed $200,000, and

(C) Accept offers in compromise in all other nonmonetary cases which do not involve issues concerning collectibility,

provided that such action is not opposed by the agency or agencies involved or the chief of the section in which the case originated, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 4. Subject to the conditions and limitations set forth in Section 8 hereof, the Attorney-in-Charge of the Dallas Field Office is authorized to accept offers in compromise in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $25,000, provided that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 5. Subject to the conditions and limitations set forth in Section 8 hereof, the Chief of the Office of Review is authorized to:

(A) Accept offers in compromise in all civil cases in which the amount of the

Government's concession, exclusive of statutory interest, does not exceed $500,000,

(B) Approve administrative settlements not exceeding $500,000, exclusive of statutory interest,

(C) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $500,000,

(D) Accept offers in compromise in all nonmonetary cases, and

(E) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount,

provided that the action is not opposed by the agency or agencies involved or the chief of the section to which the case is assigned, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 6. Subject to the conditions and limitations set forth in Section 8 hereof, each of the Deputy Assistant Attorneys General is authorized to:

(A) Accept offers in compromise of claims against the Government in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $750,000,

(B) Approve administrative settlements not exceeding $750,000, exclusive of statutory interest,

(C) Accept offers in compromise of claims on behalf of the Government in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $750,000 or 10 percent of the original claim, whichever is greater,

(D) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $750,000,

(E) Accept offers in compromise in all nonmonetary cases, and

(F) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount,

provided that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 7. Subject to the conditions and limitations set forth in Section 8 hereof, United States Attorneys are authorized to:

(A) Reject offers in compromise of judgments in favor of the Government, regardless of amount,

(B) Accept offers in compromise of judgments in favor of the Government where the amount of the judgment does not exceed $200,000, and

(C) Terminate collection activity by that office as to judgments in favor of the Government which do not exceed $200,000 if the United States Attorney concludes that the judgment is uncollectible,

provided that such action has the concurrence in writing of the agency or agencies involved, and provided further that this authorization extends only to judgments which have been formally referred to the United States Attorney for collection.

Section 8. The authority redelegated herein shall be subject to the following conditions and limitations:

(A) When, for any reason, the compromise or administrative settlement or concession of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling more than the respective amounts designated in Sections 2, 3, 4, 5, 6, and 7 the case shall be forwarded for review at the appropriate level.

(B) When, because of the importance of a question of law or policy presented, the position taken by the agency or agencies or by the United States Attorney involved, or any other considerations, the person otherwise authorized herein to take final action (or the Chief of the Office of Review, in cases which have been considered by such office) is of the opinion that the proposed disposition should be reviewed at a higher level, the case shall be forwarded for such review.

(C) If the Department has previously submitted a case to the Joint Committee on Taxation leaving one or more issues unresolved, any subsequent compromise or concession in that case must be submitted to the Joint Committee, whether or not the overpayment exceeds the amount specified in Section 6405 of the Internal Revenue Code.

(D) Nothing in this Directive shall be construed as altering any provision of Subpart Y of Part O of Title 28 of the Code of Federal Regulations requiring the submission of certain cases to the Attorney General, the Deputy Attorney General, or the Solicitor General.

(E) Authority to approve recommendations that the Government confess error, or make administrative settlements, in cases on appeal, is excepted from the foregoing redelegations.

(F) The Assistant Attorney General, at any time, may withdraw any authority delegated by this Directive as it relates to any particular case or category of cases, or to any part thereof.

Section 9. This Directive supersedes Tax Division Directive No. 54, effective May 7, 1986.

Section 10. This Directive shall become effective on the date of its publication in the **Federal Register**.

Dated: April 27, 1990.

Shirley D. Peterson,

Assistant Attorney General, Tax Division.

Dated: May 15, 1990.

Approved:

Donald B. Ayer,

Deputy Attorney General. §

[FR Doc. 90-12950 Filed 6-4-90; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 0

[Tax Division Directive No. 83]

Redelegation of Authority to Release Rights of Redemption in Certain Cases

AGENCY: Tax Division, Department of Justice.

ACTION: Final rule.

SUMMARY: This directive eliminates the need for a U.S. Attorney to obtain the favorable recommendation of the appropriate Regional Counsel of the Internal Revenue Service before releasing a right of redemption. This directive supersedes Tax Division Directive No. 55.

DATES: June 5, 1990.

FOR FURTHER INFORMATION CONTACT: Milan Karlan, Tax Division, Department of Justice, Washington, DC 20530, (202) 724-6567.

SUPPLEMENTARY INFORMATION: This directive eliminates the need for a U.S. Attorney to obtain the favorable recommendation of the appropriate Regional Counsel of the Internal Revenue Service before releasing a right of redemption. This recommendation is no longer necessary as a matter of routine. This directive supersedes Tax Division Directive No. 55.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This regulation is not a major rule within the meaning of Executive Order 12291. Therefore a regulatory impact analysis has not been prepared. Finally, this regulation does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 0

Authority delegations.

Accordingly, 28 CFR part 0 is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 3103; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001-2017p; Pub. L. No. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

Directive No. 55 [Removed]

2. Tax Division Directive No. 55 is removed.

3. Tax Division Directive No. 83 is added to read as follows:

[Directive No. 83]

By virtue of the authority vested in me by part 0 of title 28 of the Code of Federal

Regulations, particularly sections 0.70, 0.160, 0.162, 0.164, 0.166, and 0.168, it is hereby ordered as follows:

Section 1. The U.S. Attorney for each district in which is located real property, which is subject to a right of redemption of the United States in respect of Federal tax liens, arising under section 2410(c) of title 28 of the United States Code, or under State law when the United States has been joined as a party to a suit, is authorized to release the right of redemption, subject to the following limitations and conditions—

(1) This redelegation of authority relates only to real property on which is located only one single-family residence, and to all other real property having a fair market value not exceeding $200,000. That limitation as to value or use shall not apply in those cases in which the release is requested by the Department of Veterans Affairs or any other Federal agency.

(2) The consideration paid for the release must be equal to the value of the right of redemption, or fifty dollars ($50), whichever is greater. However, no consideration shall be required for releases issued to the Department of Veterans Affairs or any other Federal agency.

(3) The following described documents must be placed in the U.S. Attorney's file in each case in which a release is issued—

(A) Appraisals by two disinterested and well-qualified persons. In those cases in which the applicant is a Federal agency, the appraisal of that agency may be substituted for the two appraisals generally required.

(B) Such other information and documents as the Tax Division may prescribe.

Section 2. This directive supersedes Tax Division Directive No. 55, effective May 7, 1986.

Section 3. This directive shall become effective on the date of its publication in the **Federal Register.**

Dated: April 27, 1990.

Shirley D. Peterson,

Assistant Attorney General, Tax Division.

Approved Date: May 15, 1990.

Donald B. Ayer,

Deputy Attorney General.

[FR Doc. 90-12951 Filed 6-4-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of final action to preempt provisions of State law.

SUMMARY: OSM is announcing its final action to preempt certain provisions of the Kentucky Surface Mining Law (KRS chapter 350) enacted into law by the 1988 Kentucky General Assembly by the passage of Senate Bill No. 258. The provisions preempted are those provisions at KRS 350.093(9) limiting a permittee's responsibility for third party actions.

This action is being taken because the Director of the Office of Surface Mining Reclamation and Enforcement (Director) has determined that these provisions are less stringent than the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

EFFECTIVE DATE: June 5, 1990.

FOR FURTHER INFORMATION CONTACT: Roger Calhoun, Acting Director, Lexington Field Office, 340 Legion Drive, suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

By a letter dated April 21, 1988 (Administrative Record No. KY-800), Kentucky submitted to OSM proposed amendments to the Kentucky program to conform to changes in Kentucky law enacted by the 1988 General Assembly. OSM announced receipt of the proposed amendments on June 21, 1988 (53 FR 23287), and in the same notice, requested public comments and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period ended July 21, 1988.

OSM's review of the proposed amendments identified several concerns, and on September 29, 1988, OSM asked Kentucky to submit additional supporting information (Administrative Record No. KY-831). On February 23, 1989, Kentucky responded to OSM's request (Administrative Record No. KY-859). In view of the new information provided, OSM announced in the March 31, 1989, **Federal Register** (54 FR 13198-13199) the receipt of this information and again solicited public comments. The reopened comment period ended on May 1, 1989.

By a letter dated May 12, 1989 (Administrative Record No. KY-886), OSM notified Kentucky that KRS 350.093(6)(c) (now KRS 350.093(9)) as amended by Senate Bill No. 258 is, "less effective than the Federal laws and regulations". Kentucky was advised by OSM not to implement the amended statute. By a letter dated May 17, 1989 (Administrative Record No. KY-891), Kentucky advised OSM that they would not interpret this statute contrary to its clear language, nor could they modify the corresponding regulations to interpret this statute consistent with the Federal rule.

In view of this statement by Kentucky, OSM published in the February 12, 1990, **Federal Register** (55 FR 4868-4869) a notice of proposed action to preempt certain provisions of State law, and in the same notice, opened the public comment period. The public comment period ended on March 14, 1990. OSM also published in the February 12, 1990, **Federal Register** (55 FR 4866-4868) a notice of disapproval of proposed amendment announcing the Director's action to disapprove. The effective date of that notice was February 12, 1990.

On February 27, 1990, Kentucky informed OSM that the statutory reference cited as KRS 350.093(6)(c) in the **Federal Register** notices published by OSM on February 12, 1990, were incorrect and that the correct reference, as codified by Kentucky, is KRS 305.093(9). To effect this correction OSM published in the March 29, 1990, **Federal Register** (55 FR 11618-11619) a notice of proposed action to preempt; correction, and in the same **Federal Register** (55 FR 11619) a notice of disapproval of proposed amendment; correction.

II. Summary and disposition of comments

One substantive comment was received concerning the proposed action to preempt. The Kentucky Resources Council (KRC) expressed its support for the proposal to preempt and set aside the provisions of KRS 350.093(9).

III. Director's Findings and Decision

Pursuant to section 505 of SMCRA and 30 CFR 730.11(a), the Director is preempting the specific language of the KRS 350.093(9) identified below and will require Kentucky to implement the Kentucky program as approved by OSM.

The Director, based on the rationale given in the "Director's Findings" in the February 12, 1990, **Federal Register** (55 FR 4867), is preempting KRS 350.093(6)(c), now codified as KRS 350.093(9), which reads as follows: "Actions of third parties which are beyond the control and influence of the permittee and for which the permittee is not responsible under the permit shall not be covered by the bond." As stated in the February 12, 1990, finding, the Director has taken this action because he has determined that this provision is less stringent than sections 509 and 519 of SMCRA and less effective than 30 CFR 800.13(d).

IV. Effect of Director's Decision

Because 30 CFR 732.17(g) provides that no changes to State laws or regulations shall take effect for purposes of a State program until approved as an

amendment, it is generally not necessary to use the preemption provision of 30 CFR 730.11(a) and section 505(b) of SMCRA. However, Kentucky has enacted legislation which is clearly less stringent than sections 509 and 519 of SMCRA and less effective than 30 CFR 800.13(d).

Therefore, to remove any ambiguity regarding the status of KRS 350.093(9), which the Director found less stringent than SMCRA and less effective than the Federal regulations, the Director, pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), is preempting that section of Kentucky law, as discussed in the section of this notice entitled "Director's Findings and Decision." This action clarifies that this provision cannot be implemented or enforced by any party.

Dated: May 18, 1990.

W. Hord Tipton,

Deputy Director, Operations and Technical Services.

[FR Doc. 90-12935 Filed 6-4-90; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 920

Maryland Regulatory Program, Enforcement

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendments.

SUMMARY: OSM is announcing the approval of proposed amendments to the Maryland regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed changes revise the public notice and hearing requirements; eliminate the requirement for a separate revegetation bond; combine the backfilling and planting reports in lieu of current requirements for separate reports; establish procedures for issuing a show cause order and providing an operator the opportunity to request an adjudicatory hearing; and finally, provide the MDDNR with the authority to waive mandatory civil penalty assessments for failure of the operator to submit certain administrative reports. These amendments are intended to enhance the Maryland program.

EFFECTIVE DATE: June 5, 1990.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, OSM, 603 Morris Street, Charleston, WV 25301; Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214-7217). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.15 and 30 CFR 920.16.

II. Submission of Amendments

By letter dated July 8, 1987 (Administrative Record Number MD-375), Maryland Bureau of Mines (MDBOM) submitted copies of Maryland State House Bill 692 to OSM for processing as a formal amendment to the Maryland program in accordance with 30 CFR 732.17(g). The amendment includes revisions to the public hearing requirements for permit applications.

By letter dated June 10, 1988 (Administrative Record Number MD-376), MDBOM also submitted copies of Maryland House Bills 817 and 277 as formal amendments in accordance with 30 CFR 732.17(g). The amendments include revisions to the requirements for bonding, water replacement, and mandatory civil penalties for failure to submit certain administrative reports.

OSM announced receipt of the proposed amendments in the April 11, 1989, **Federal Register** (54 FR 14367), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments.

Maryland submitted subsequent changes to the bonding and water replacement provisions in House Bill 817 on June 15, 1989 (54 FR 33042) and July 18, 1989 (54 FR 30098). Therefore, the Director is deferring action on sections 7-514.1 and 7-519 of House Bill 817 until all the provisions of the proposed bonding and water replacement regulations can be adequately reviewed.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendments submitted on July 8, 1987, and June 10, 1988. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. Coal Mining Permit Application Public Hearing Provisions (House Bill 692)

(a) *Successive Renewal of Permits.* Maryland is modifying section 7-505(a) of the Natural Resources Article of the Maryland Annotated Code (MAC) to provide for the successive renewal of permits. The previous State rule did not carry this provision. As the corresponding Federal rule at 30 CFR 774.15(a) authorizes the right of successive renewal for valid permits, the Director finds the revised State rule no less effective than its Federal counterpart.

(b) *Permit Applications.* Maryland is revising MAC section 7-505(c) to require that permit revision applications contain the same minimum requirements as permit applications. Section 511(a)(2) of SMCRA allows the regulatory authority to establish guidelines to determine which permit revisions may be subjected to the same information requirements as permits. Therefore, the Director finds the revised State rule to be no less stringent than the Act.

Maryland is revising MAC section 7-505(c)(1) by deleting "land affected" and replacing it with "land to be affected." As this language is identical to that which appears in Section 513(a) of SMCRA, the Director finds the revised State rule to be no less stringent than its Federal counterpart.

Section 7-505(c)(1) is further revised to specify that written comments and requests for a public hearing will be received by the State. The previous rule used the more general term "public comment." As the revised language is substantively identical to that which appears in 30 CFR 773.13(a)(iv), the Director finds the revised State rule no less effective than its Federal counterpart.

(c) *Permit Application Review.* Maryland is modifying MAC section 7-505(d)(1)(I) to require the MDBOM, as part of the permit application review process, to issue a public notice of opportunity to submit written comment and request a hearing. The previous

State rule required to MDBOM to "provide for" the issuance of the notice. The revised State rule is substantively identical to the corresponding Federal rule at 30 CFR 773.13(a)(3). Therefore, the Director finds that the State rule is no less effective than its Federal counterpart.

Maryland is modifying MAC section 7–505(d)(1)(II) to require the MDBOM to advertise the public notice in a newspaper of general circulation in the county of the proposed mining at least once a week for two successive weeks. The previous State rule did not carry this stipulation. The Federal rule at 30 CFR 773.13(a)(3) requires that the applicant advertise the notice in a newspaper of general circulation for four successive weeks. MAC section 7–505(c)(1) makes such a requirement. When read together with MAC section 7–505(c)(1), the Director finds the revised State rule to be no less effective than the Federal rule at 30 CFR 773.13(a)(3).

Maryland is modifying MAC section 7–505(d)(1)(III) to require the MDBOM to issue a public notice for applications for permit revisions only when significant alterations in the permit are proposed. The previous State rule did not address this issue. As the Federal rule at 30 CFR 773.13(a)(3) only requires a notice for "significant revisions" to a permit, the Director find the revised State rule to be no less effective than its Federal counterpart.

Maryland is modifying MAC section 7–505(d)(2) to require the MDBOM to provide written notification of permit applications or revisions "to any interested person who requests written notice." In the Code of Maryland Administrative Regulations (COMAR) at section 08.13.09.04(B)(5), the MDBOM is further directed to notify the appropriate local, State and Federal governmental agencies. At 30 CFR 773.13(a)(3) (i) and (ii), the regulatory authority is required to provide written notification to those local, State and Federal governmental agencies with an interest in the proposed operation or which are part of the permit coordinating process. When read together with COMAR section 08.13.09.04(B)(5), the Director finds the revised State rule to be no less effective than the corresponding Federal rule at 30 CFR 773.13(a)(3) (i) and (ii).

Maryland is modifying MAC section 7–505(d)(3) to require that if a hearing is requested, the MDBOM is required to notify the parties involved and to publish the date, time and location of the hearing in a newspaper of general circulation in the area of the proposed operation. The MDBOM and the Land Reclamation Committee are required to hold a joint public hearing, if requested. The previous State rule required a public hearing on all applications. As the revised State rule is substantively identical to the corresponding Federal rule at 30 CFR 773.13(c)(2)(ii), the Director finds it no less effective than its Federal counterpart.

Maryland is modifying MAC section 7–505(d)(4) to require that the hearing be held at least 15 days (formerly 30 days) but not more than 60 days after public notice has been provided. Copies of the application are to be available for public inspection 15 days (formerly 30 days) before any hearing. The Federal rules at 30 CFR 773.13(c)(2) and 30 CFR 773.13(c)(2)(ii) require a two-week advertisement period prior to the hearing and require that the hearing be held within a "reasonable time." The Federal rules at 30 CFR 773.13(d) require that permit applications be made available for public inspection but do not specify a time frame. The Director finds that the State's revised time frames are reasonable and the revised State rule is no less effective than the corresponding Federal rules.

2. Bond Forfeiture, Replacement of Water Supplies Impacted by Open-Pit Mining (House Bill 817)

Maryland is amending MAC section 7–514 to govern the application of funds from bond forfeiture.

(a) *Application of Funds from Bond Forfeiture.* MAC section 7–514(a)(2) has been added. Part (I) states that funds received from bond forfeitures shall be used to reclaim the land affected by the operation on which the liability was charged. The Director finds that the revised State rule is no less effective than its Federal counterpart at 30 CFR 800.50(b)(2) which authorizes the use of forfeited funds for the completion of the reclamation plan.

Part (II) states that funds received on a bond forfeiture in excess of the amount required to reclaim the bonded land may be used to reclaim any other land affected by open-pit mining. In 1980, the U.S. District Court remanded § 808.14(b) of OSM's 1979 bond forfeiture rules for not having a provision for returning unused portions of the forfeited bond (*In re: Permanent Surface Mining Regulations Litigation*, February 26, 1980). The court based its remand of the 1979 rule on the fact that neither section 509 nor any other part of SMCRA authorizes the use of unused portions of forfeited bond funds to pay for other reclamation costs of State programs. In 1983, OSM responded by requiring at 30 CFR 800.50(d)(2) that unused funds be returned by the regulatory authority to the party from whom they were collected (48 FR 32957, July 19, 1983).

Unlike former § 808.14(b), the Maryland proposed rule at part (II) is not dependent upon SMCRA for its authority. It has an independent statutory basis, State law, for the use of excess forfeited funds, thereby remedying the basis for which OSM's 1979 rule was remanded. While Maryland's proposed use of excess forfeited funds is not specifically authorized by SMCRA, it is nonetheless well within the discretion provided to the states by section 505 of SMCRA to propose more stringent regulation of the surface coal mining and reclamation operations than do the provisions of SMCRA and its implementing regulations. The Maryland excess bond provisions provide substantial additional incentive beyond that afforded under the Federal program for the operator to complete, in an economical and efficient fashion, the required reclamation of the permitted area. Therefore, the Director finds the Maryland proposed rule at MAC section 7–514(a)(2) part (II) to be not inconsistent with the requirements of SMCRA and the Federal rules at 30 CFR part 800.

3. Public Hearings, Bonding, and Civil Penalties (HB 277)

(a) *Public hearings.* Maryland is amending MAC section 7–505(b)(2) to repeal the requirement for a mandatory public hearing when a permit application indicates that a mining operation will occur within 100 feet of the outside right-of-way line of any public road. Instead, a public notice and opportunity for a public hearing will be issued.

As amended, MAC section 7–503(b)(2) is similar to the corresponding Federal rules at 30 CFR 773.13(c) and 30 CFR 761.12(d)(2) in that it provides for informal hearings upon request. The Director, therefore, finds the rule to be no less effective than these Federal regulations.

(b) *Performance Bonds.* The State proposes to modify MAC section 7–506 to require that a single performance bond be filed by an operator. Current State regulations require two separate bonds, one specifically for revegetation.

The bond shall be filed after the permit is approved but prior to issuance and the amount shall be determined by the State and may not be less than $600 per acre. However, the open-acre limit may not be less than an additional $1500 per acre. Maryland defines open-acre as any disturbed area, excluding any area which has not been satisfactorily

backfilled, regraded, topsoiled, seeded, and mulched in accordance with an approved reclamation plan and which will not be redisturbed. Open-acre limit is defined as the number of acres approved to be bonded as open-acre and for which a bond is posted before the issuance of a permit.

The Federal regulations at 30 CFR 800.4 and 800.11 and section 509 of SMCRA require that a bond (or bonds) be filed but do not require the filing of two separate bonds or one bond specifically designated for revegetation responsibilities. The Director finds the revision of this provision to be no less effective than the corresponding Federal regulations.

(c) *Reporting Requirements.* Maryland proposes to revise MAC section 7–511 to require that the operator submit to the MDBOM a combined backfilling and planting report. Current State regulations specify the submission of two separate reports to be filed two weeks after completion of the backfilling and planting activities. The revised proposal would allow the combined report to be filed in conjunction with the Annual Mining and Reclamation Progress Report. Upon inspection of the affected area and approval of the report, the State will release the appropriate portion of the performance bond.

The corresponding Federal rules at 30 CFR 800.40(a) which govern the release of performance bonds require the operator, prior to bond release, to submit a bond release application to the regulatory authority reporting the results of his reclamation activity in relation to the approved reclamation plan. The State requirement of a backfilling and planting report is consistent with this rule in that no portion of a bond may be released without the submission of the report and approval by the State. The Federal rule at 30 CFR 800.40(b) requires the regulatory authority upon receipt of a bond release application to conduct an inspection and evaluation of the reclamation work. The State rule is consistent in that the State inspect the reported area prior to bond release. The Director therefore finds the revised State rules to be no less effective than their Federal counterparts.

(d) *Show Cause and Hearing Procedures.* Maryland is revising MAC section 7–507(c)(2) to require the MDBOM to issue an order requiring an operator to show cause why his permit should not be revoked and provide opportunity for an adjudicatory hearing if the operator persistently or repeatedly fails to comply with a notice or order. The provisions of revised section 7–507(c)(2) are in addition to, and not in place of, existing Maryland regulations at COMAR 08.13.09.42 which, pursuant to the 30 CFR 732.17, were found in 1986 to be inconsistent with the Federal pattern of violation regulations at 30 CFR 843.13 (MD adm. Rec. No. 351). The COMAR regulations at 08.13.09.42 are themselves presently the subject of a separate State program amendment to achieve consistency with the Federal requirements (MD amd. Rec. No. 376). Revised section 7–507(c)(2) neither has a direct Federal counterpart nor conflicts with the pattern of violation regulations at 30 CFR 843.13. The Director therefore finds the Maryland rule to be not inconsistent with the requirements of SMCRA and the Federal regulations.

Maryland is also revising MAC section 7–513 to provide for the discretionary issuance of show cause orders by the State for those cases where an operator has failed to comply with any provision of the permit. If an operator fails to show cause why the permit should not be revoked, the permit shall be revoked and the bond forfeited. Because this section is more stringent than 30 CFR 843.13 which requires a pattern of violations to justify revocation of a permit, the Director finds section 7–513 to be no less effective than the Federal rule.

The revised State rule at section 7–513 also states that the MDBOM may issue a show cause order if the operator has failed to produce coal or remove overburden for a period of six months on the permit site. The Federal rule at 30 CFR 816.131 governing temporary cessation of operations does not have a comparable show cause provision. As this revision to the State rule at section 7–513 is more stringent than the Federal rule, the Director finds it to be no less effective than its Federal counterpart.

(e) *Civil Penalties.* Maryland is revising MAC section 7–517 to authorize the State to waive the assessment of a civil penalty when an operator fails to comply with an order issued for the failure to submit certain administrative reports. None of the specified reports are required to be submitted under the Federal rules. The Director, therefore, finds the proposed State rule not inconsistent with nor less effective than the Federal rules.

Public Comments

The public comment period and opportunity to request a public hearing announced in the April 11, 1989, **Federal Register** ended on May 11, 1989. A public hearing was not held as no one requested an opportunity to provide testimony.

The Advisory Council on Historic Preservation (ACHP) submitted written comments on April 20, 1989 (Administrative Record Number MD–390). With regard to House Bill 692, the ACHP notes that MAC section 7–505(c) should require that surface mining permit applications contain the location of any historic properties within the area to be affected by the mining operation.

The Director notes that the Code of Maryland Regulations (COMAR) at 08.13.09.02 L(1) currently requires that permit applications include a map which identifies the location of any cultural or historic resources within the mine plan or adjacent area which are listed in the National Register of Historic Places (NRHP). Maryland is also proposing to amend COMAR to include the requirement that the permit application identify those resources eligible for listing in the NRHP (54 FR 39003, September 22, 1989).

Regarding House Bill 277, the ACHP contends that the language concerning historic properties in MAC section 7–505(b)(i) is ambiguous with respect to whether a National Register property must be publicly owned to be subject to protection under this section. This comment appears to address MAC section 7–505(b)(2)(i), not section 7–505(b)(i). The Director notes that by letter dated June 9, 1987, OSM identified sections 08.13.09.10B(2) and 08.13.09.10C(7) of the Code of Maryland Regulations (COMAR) as being less effective than the Federal regulations at 30 CFR 761.11(c) and 761.12(f)(1) in that protection must be extended to privately owned National Register sites. Maryland is required to correct this deficiency.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of Labor, Mine Safety and Health Administration, responded on April 5, 1989, and concurred without further comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendments as submitted by Maryland on July 8, 1987 and June 10, 1988, with the exception of MAC section 7–514 and 7–519 of House Bill 817 for which action is being deferred.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. This final rule is being made effective immediately

to expedite the State program amendment process and to encourage states to being their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with the respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act [33 U.S.C. 1251 *et seq.*) or the Clean Air Act [42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. As required by 30 CFR 732.17(h)(11)(i), the Director solicited EPA's comments on these changes and the EPA concluded without comment.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201, *et seq.*

2. In § 920.15, a new paragraph (g) is added to read as follows:

§ 920.15 Approval of Regulatory Program Amendments.

* * * * *

(g) The following amendments submitted to OSM on July 8, 1987, and June 10, 1988, are approved effective June 5, 1990. The amendments consist of the following modifications to the Maryland program:

(1) Revision of the following rules of the Maryland Annotated Code:

7–505(a)	Permit Hearings.
7–505(c)(1)	Written Comments and Requests for Public Hearing Notices.
7–505(c)(2)	Written Notices of Applications for Permits; Public Hearing Notices.
7–505(d)(2)	Application Review Procedures.
Section 2	Effective Date.
7–514(a)	Bituminous Coal Open-Pit Mining Reclamation Fund.
7–505(b)(2)(iii)	Public Road Right-of-Way Hearing Requests.
7–506	Performance Bonds.
7–511(A)&(B)	Combined Backfilling and Planting Reports.
7–513	Show Cause Order Procedures.
7–517(D)	Civil Penalty Assessment Waivers.

(2) Addition of the following rules to the Maryland Annotated Code: 7–505(d)(1) I, II, III Procedures for Permit Application Reviews; Public Notices.

(3) Deletion of the following rule from the Maryland Annotated Code: 7–05-(d)(1) Public Notices.

[FR Doc. 90–12887 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval, with certain exceptions and additional requirements, of a proposed amendment to the Missouri permanent regulatory program (the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was submitted to OSM on March 18, 1988, and pertains to fish and wildlife, revegetation, environmental resource information, reclamation and operations plans, permit application processes, bonding, and informal assessment conferences. The amendment revises the State program to be consistent with the corresponding Federal standards.

EFFECTIVE DATE: June 5, 1990.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, room 502, Kansas City, Missouri 64106; Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background On the Missouri Program

The Secretary of Interior conditionally approved the Missouri program on November 21, 1980. Information pertinent to the general background and revisions to the Missouri program, as well as the Secretary's findings, the disposition of comments, and the conditions of approval, can be found in the November 21, 1980, Federal Register (45 FR 77017). Subsequent actions concerning amendments to the Missouri program are codified at 30 CFR 925.12, 925.15, and 925.16.

II. Submission of Amendment

On March 18, 1988, Missouri submitted to OSM proposed regulatory revisions to amend its approved program (Administrative Record No. MO–371). The proposed regulations would amend Chapters 3, 6, 7, and 8 of Division 40—Land Reclamation Commission, Title 10—Department of Natural Resources, of the Missouri Code of State Regulations (CSR).

Missouri proposes to revise: 10 CSR 40–3.100(2) and 40–3.250(1)(B), Surface and Underground Mining Requirements for the Protection of Fish, Wildlife, and

Related Environmental Values; 10 CSR 40–3.120 (1), (6)(A), (6)(B)3, and (7)(C)2, and 40–3.270 (1), (6)(A), (6)(B)3, and (7)(C)2, Surface and Underground Mining Revegetation Requirements; 10 CSR 40–6.040 (3)(B), (11) (B), (C), and (D), and 40–6.110 (3) (B), (11) (B), (C), and (D), Surface and Underground Mining Permit Application Requirements for Environmental Resource Information; 10 CSR 40–6.050 (7)(B), (7)(C), (14)(B), and (14)(C), and 40–6.120 (8) and (12), Surface and Underground Mining Permit Application Requirements for Reclamation and Operations Plans; 10 CSR 40–6.070(8)(E), Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions; 10 CSR 40–7.011(2) (D), (E), and (F), Bond Requirements; and 10 CSR 40–8.040(8), Procedures for Informal Assessment Conferences.

The amendment proposed by Missouri responds to (1) a January 30, 1986, letter sent from OSM to Missouri in accordance with 30 CFR 732.17(d) stating the inadequacy of the Missouri alternative bonding system (Administrative Record No. MO–351), (2) a June 11, 1986, letter sent from OSM to Missouri in accordance with 30 CFR 732.17(d) requiring certain provisions of the program to be updated for consistency with the Federal regulations through July 1, 1983 (Administrative Record No. MO–295), and (3) a June 9, 1987, letter sent from OSM to Missouri in accordance with 30 CFR 732.17(d) requiring the State to amend its program concerning historic, cultural, and archaeological resources (Administrative Record No. MO–364). Missouri also elected to revise provisions at its own initiative.

OSM announced receipt of the proposed amendment in the May 3, 1988, Federal Register (53 FR 15702) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on the amendment's substantive adequacy. No public comments were received by June 2, 1988, the close of the comment period. The public hearing, scheduled for May 31, 1988, was not held because no one requested an opportunity to testify.

On July 18, 1988, following a thorough review of the proposed amendment, OSM notified Missouri that proposed regulations regarding revegetation and fish and wildlife appeared to be less effective than the counterpart Federal regulations (Administrative Record No. MO–396). On December 9, 1988, OSM notified Missouri that the proposed regulations regarding settlement agreements also appeared to be less effective than the counterpart Federal regulations (Administrative Record No. MO–414). On August 18, 1989, OSM again notified Missouri that additional proposed regulations regarding fish and wildlife, bonding, and informal assessment conferences appeared to be less effective than the counterpart Federal regulations (Administrative Record No. MO–460). On August 2, 1988, December 29, 1988, and August 30, 1989, Missouri responded to each of the letters and informed OSM that it planned to address the concerns during future rulemaking (Administrative Record Nos. MO–393, MO–412, and MO–470).

III. Director's Findings

1. Provisions Not Discussed

Missouri proposes revisions that (1) contain language that is the same as or similar to the counterpart sections of SMCRA or the Federal regulations, (2) are nonsubstantive, or (3) add specificity without adversely affecting other aspects of the program.

These revisions and their respective counterpart Federal regulations are: 10 CSR 40–3.120(1)(A)1 (30 CFR 816.111(a)(1)), 10 CSR 40–3.120(1)(A)2 (30 CFR 816.111(a)(2)), 10 CSR 40–3.120(1)(A)3 (30 CFR 816.111(a)(3)), 10 CSR 40–3.120(1)(A)4 (30 CFR 816.111(a)(4)), 10 CSR 40–3.120(1)(B)1 (30 CFR 816.111(b)(1)), 10 CSR 40–3.120(1)(B)2 (30 CFR 816.111(b)(2)), 10 CSR 40–3.120(1)(B)3 (30 CFR 816.111(b)(3)), 10 CSR 40–3.120(1)(B)4 (30 CFR 816.111(b)(4)), 10 CSR 40–3.120(1)(B)5 (30 CFR 816.111(b)(5)), 10 CSR 40–3.120(1)(C) (30 CFR 816.111(d)), 10 CSR 40–3.120(6)(B)3 (30 CFR 816.116(b)(3(iii)), 10 CSR 40–3.120(7)(C)2 (30 CFR 816.116(b)(3)(i)), 10 CSR 40–3.270(1)(A)1 (30 CFR 817.111(a)(1)), 10 CSR 40–3.270(1)(A)2 (30 CFR 817.111(a)(2)), 10 CSR 40–3.270(1)(A)3 (30 CFR 817.111(a)(3)), 10 CSR 40–3.270(1)(A)4 (30 CFR 817.111(a)(4)), 10 CSR 40–3.270(1)(B)1 (30 CFR 817.111(b)(1)), 10 CSR 40–3.270(1)(B)2 (30 CFR 817.111(b)(2)), 10 CSR 40–3.270(1)(B)3 (30 CFR 817.111(b)(3)), 10 CSR 40–3.270(1)(B)4 (30 CFR 817.111(b)(4)), 10 CSR 40–3.270(1)(B)5 (30 CFR 817.111(b)(5)), 10 CSR 40–3.270(1)(C) (30 CFR 817.111(d)), 10 CSR 40–3.270(6)(B)3 (30 CFR 817.116(b)(3)(iii)), and 10 CSR 40–3.270(7)(C)2 (30 CFR 817.116(b)(3)(i)), Surface and Underground Mining Revegetation Requirements; 10 CSR 40–6.040(3)(B) (30 CFR 779.12(b) (1) and (2)) and 10 CSR 40–6.110(3)(B) (30 CFR 783.12(b)(1) and (2)), General Environmental Resource Information; 10 CSR 40–6.040(11)(C) (30 CFR 780.16(a)(1)) and 10 CSR 40–6.110(11)(C) (30 CFR 784.21(a)(1)), Fish and Wildlife Resource Information; 10 CSR 40–6.050(7)(A) (30 CFR 780.16(b)(1)), 10 CSR 40–6.050(7)(B)2 (30 CFR 780.16(b)(3)(ii)), 10 CSR 40.6–120(12)(A) (30 CFR 784.21(b)(1)), 10 CSR 40–6–120(12)(B)2 (30 CFR 784.21(b)(3)(ii)), Fish and Wildlife Plan; 10 CSR 40–6.050(14)(B) (30 CFR 780.31(a)), and 10 CSR 40–6.120(8)(B) (30 CFR 784.17(a)), Surface and Underground Mining Permit Application Requirements for Reclamation and Operations Plans; 10 CSR 40–6.070(8)(E) (30 CFR 773.15(c)(11)), Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions; and 10 CSR 40–8.040(8)(I) (30 CFR 845.18(b)(4)), and 10 CSR 40–8.040(8)(M) (30 CFR 845.18(f)), Procedures for Informal Assessment Conference.

The Director finds that the proposed revisions identified above are no less effective than the Federal regulations.

2. 10 CSR 40–3.100(2) and 40–3.250(1)(B), Protection of Fish, Wildlife, and Related Environmental Resources

The State regulations at 10 CSR 40–3.100(2) and 40–3.250(1)(B) require a person who conducts surface mining activities to promptly report to the Director the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of Interior, any plant or animal listed as threatened or endangered by the State, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the Director by that person.

Missouri proposes to add a requirement to the same paragraphs that, upon notification, the Director shall consult with the Missouri Department of Conservation and the U.S. Fish and Wildlife Service, and, after consultation, shall identify whether and under what conditions the operator may proceed.

The counterpart Federal regulations at 30 CFR 816.97(b) and 817.97(b) require the same reporting, notification, consultation, and mitigation requirements as the State regulations. However, the Federal regulations also prohibit surface mining activity that is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or that is likely to result in the destruction or adverse modification of their designated critical habitats.

Missouri's proposed revisions add requirements that are similar to the Federal regulations but exclude a mining prohibition that the Federal regulations require.

The Director finds that as submitted, Missouri's proposed revisions at 10 CSR 40–3.100(2) and 40–3.250(1)(B) regarding the protection of fish, wildlife, and related environmental resources are no less effective than the Federal regulations at 30 CFR 816.97(b) and 817.97(b) and he is approving the proposed revisions. However, Missouri must further amend its program to prohibit surface mining activity that is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or that is likely to result in the destruction or adverse modification of their designated critical habitats.

3. 10 CSR 40–3.120(6)(A) and 40–3.270(6)(A), Revegetation Standards for Success

The State regulations at 10 CSR 40–3.120(6)(A) and 40–3.270(6)(A) require revegetation success to be measured by techniques approved in the permit and plan after consultation with appropriate State and Federal agencies. Comparison of ground cover and productivity may be made on the basis of (1) reference areas or (2) technical guidance procedures published by the United States Department of Agriculture (USDA) or United States Department of Interior (USDI).

Missouri proposes to revise the same paragraphs by adding a new option for revegetation success measurement. It would allow the comparison of ground cover and productivity to be made on the basis of criteria representative of unmined lands in the area being reclaimed.

The counterpart Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require standards for success to include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking.

The Federal regulations require all standards for success to include unmined land criteria. Missouri's proposed new standard for success is acceptable because it requires the use of criteria representative of unmined land. Missouri's use of reference areas is also acceptable because the State's definition of reference area at 10 CSR 40–8.010(1)(A) relies on unmined land criteria. Missouri's final option, the use of technical guidance procedures, is acceptable but cannot be enforced until Missouri submits the technical guidance procedures to the Director and he reviews and approves them. During his review, the Director will ensure that the technical guidance procedures contain criteria that are representative of unmined lands in the area.

The Director finds that the proposed revisions to 10 CSR 40–3.120(6)(A) and 40–3.270(6)(A) regarding revegetation standards for success are no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) and is approving them. However, before Missouri can allow the use of technical guidance procedures, such as those published by the USDA or USDI, the Director is requiring Missouri to submit an amendment to its program for his review and approval to include those technical guidance procedures that the State considers acceptable for use in evaluating revegetation success.

4. 10 CSR 40–6.040(11) and 40–6.110(11), Fish and Wildlife Resource Information

The State regulations at 10 CSR 40–6.040(11) and 40–6.110(11) discuss the surface and underground permit application requirements for fish and wildlife resource information.

a. Missouri proposes to revise its regulations by adding subsections (B) that would require each permit application to include "information on fish and wildlife and their habitats within the proposed mine plan area and the portions of the adjacent areas where effects on such resources may reasonably be expected to occur." Such information would have to be in sufficient detail to design the protection and enhancement plan required by 10 CSR 40–6.050(7) and 40–6.120(12).

The counterpart Federal regulations, 30 CFR 780.16(a) and 784.21(a), require each permit application to include fish and wildlife resource information for the permit area and adjacent area. Like the proposed State provisions, the Federal provisions require that the necessary information for a fish and wildlife plan be sufficient to design the required protection and enhancement plan. Unlike the proposed State provision, however, the Federal regulations do not limit the scope of such informational requirements to "portions of the adjacent areas where effects on [fish and wildlife and their habitats] may reasonably be expected to occur," but instead requires information for the permit and adjacent areas. However, since the Federal regulation at 30 CFR 701.5 defines adjacent area as meaning the area outside the permit area where a resource or resources are or reasonably could be expected to be adversely impacted by proposed mining operations, the proposed Missouri revision is no less effective than the Federal regulation requirements. Therefore, the Director is approving proposed State revisions at 10 CSR 40–6.040(11)(B) and 40–6.110(11)(B) on the basis that the proposed revisions are no less effective than the counterpart Federal provisions.

b. Missouri also proposes to revise 10 CSR 40–6.040(11) and 40–6.110(11) by adding subsections (C) that would require that the director, in consultation with the Missouri Department of Conservation and the U.S. Fish and Wildlife Service, determine the minimum level of informational detail and specify the areas from which information will be obtained and make such a determination based on: (1) published data and the Missouri Natural Features Inventory and other information; (2) Site-specific information obtained by the applicant in accordance with subsections (D) of the regulations; and (3) written guidance obtained from agencies consulted.

The counterpart Federal regulations at 30 CFR 780.16(a)(1) and 784.21(a)(1) provide, in part, that the scope and level of detail for fish and wildlife information shall be determined by the regulatory authority in consultation with State and Federal agencies with responsibilities for fish and wildlife. Therefore, the Director is approving the proposed State revisions at 10 CSR 40–6.040(11)(C) and 40–6.110(11)(C) on the basis that the proposed revisions are no less effective than the counterpart Federal provision.

c. Missouri also proposes to revise 10 CSR 40–6.040(11) and 40–6.110(11) by adding subsections (D) that would require that site-specific information obtained by the applicant to satisfy subsections (11)(C)2 of the regulations shall, at a minimum, include the following: (1) Amount of woodland edge; (2) extent of food sources, nesting places and concealment cover; (3) degree of interspersion of habitat types; and (4) amount and quality of permanent water sources.

The Federal regulations do not contain an exact counterpart to the proposed State provisions at 10 CSR 40–6.040(11)(D) and 40–6.110(11)(D). However, the Federal regulations at 30 CFR 780.16(a)(2) and 784.21(a)(2) do mandate the circumstances when site-specific information is required. Pursuant to the Federal regulations, site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include: (i) Listed or proposed endangered or threatened species of plants or animals or their critical habitats; (ii) habitats of unusually high value for fish and wildlife; and (iii) other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

Missouri's proposed revisions at 10 CSR 40–6.040(11)(D) and 40–6.110(11)(D) set the minimum requirements for site-specific information whenever such information is required, but do not delineate the circumstances when site-specific information is required. Nor do the proposed Missouri provisions specify that such information be provided as is "necessary to address the respective species or habitats."

The Director finds that as submitted, Missouri's proposed revisions at 10 CSR 40–6.040(11)(D) and 40–6.110(11)(D) are no less effective than the Federal regulations at 30 CFR 780.16(a)(2) and 784.21(a)(2) and he is approving the revisions. However, the Director is requiring Missouri to further amend its regulations to (1) require such site-specific information as is necessary to address the respective species or habitats and (2) set forth the circumstances when site-specific fish and wildlife resource information will be required.

5. 10 CSR 40–6.050(7) and 40–6.120(12), Fish and Wildlife Plan

The State regulations at 10 CSR 40–6.050(7) and 40–6.120(12) discuss the surface and underground permit application requirements for a fish and wildlife plan.

a. Missouri proposes to revise its regulations by adding subsections (B)1 that would require a statement in the fish and wildlife plan of how the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface or underground coal mining and reclamation operations and how enhancement of these resources will be achieved, where practicable. The plan would cover the mine plan area and portions of adjacent areas as determined by the director at 10 CSR 40–6.040(11) and 40–6.110(11).

The Federal regulations at 30 CFR 780.16(b) and 784.21(b) provide for the same requirements but in addition require that the description of how the operator will minimize disturbances and adverse impacts on fish and wildlife and related values be: (1) In compliance with the Endangered Species Act and (2) based upon the best technology currently available.

Two items need to be discussed concerning the proposed Missouri amendments at 10 CSR 40–6.050(7)(B)1 and 40–6.120(12)(B)1. First, the proposed revisions, at subsections (B)1, unlike the Federal counterpart provisions, do not require the plan to be consistent with the Endangered Species Act. However, this is not a deficiency that makes the proposed Missouri provisions less effective than the Federal counterpart regulations because subsections (A) of the proposed Missouri revisions do require that the plan be consistent with the Endangered Species Act.

Second, unlike the Federal counterpart provisions, proposed 10 CSR 40–6.050(7)(B)1 and 40–6.120(12)(B)1 do not require that the description of how the operator will minimize disturbances and adverse impacts on fish and wildlife and related values be based upon the best technology currently available. Missouri needs to include this requirement in its program.

The Director finds that, as submitted, Missouri's proposed revisions at 10 CSR 40–6.050(7)(B)1 and 40–6.120(12)(B)1 are no less effective than the counterpart Federal regulations at 30 CFR 780.16(b) and 784.21(b), and he is approving them. However, the Director is requiring the State to further amend its regulations to require that the description of how the operator will minimize disturbances and adverse impacts on fish and wildlife and related values be based upon the best technology currently available.

b. Missouri proposes to amend 10 CSR 40–6.050(7) and 40–6.120(12) by adding subsections (C) that would require the applicant to include in a fish and wildlife plan a statement explaining how he/she "will utilize impact control measures, management techniques and monitoring methods" to protect or enhance the following, if they are to be affected by the proposed activities: (1) Threatened or endangered species of plant or animals listed by the Secretary under the Endangered Species Act of 1973 and their critical habitats; (2) species protected by State or Federal law, and their habitats, or other species identified through the consultation process pursuant to 10 CSR 40–6.040(11) or 40–6.110(11); and (3) habitats of unusually high value for fish and wildlife including those sites listed as having significance in the Missouri Natural Features Inventory.

Federal counterpart regulations at 30 CFR 780.16(b)(3) and 784.21(b)(3) require a fish and wildlife protection and enhancement plan to include: (1) Protective measures that will be used during the active mining phase of operation and (2) enhancement measures that will be used during reclamation and postmining phases of operation to develop aquatic and terrestrial habitat. Federal regulations 30 CFR 780.16(b)(2) and 784.21(b)(2) require the plan to apply, at a minimum, to species and habitats identified under subsections (a) of the Federal regulations.

There are three matters that need to be discussed with regard to the proposed revisions at 10 CSR 40–6.050(7)(C) and 40–6.120(12)(C). First, subsections (C) of the proposed revisions do not contain clear introductory language that make the informational requirements of the provision a necessary component of a fish and wildlife plan.

Second, the proposed Missouri revisions require the fish and wildlife plan to include a statement explaining how the applicant will "utilize impact control measures, management techniques, and monitoring methods" to protect or enhance species and habitats of the type listed in the regulation. In contrast, the Federal counterpart regulations require that a fish and wildlife protection and enhancement plan include "protective measures that will be used during the active mining phase of operation" and "enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat." The proposed Missouri revisions do not contain such requirements.

Third, the Federal regulations require that the fish and wildlife protection and enhancement plan apply, at a minimum, to species and habitats identified under subsections (a) of the Federal regulations. While the species and habitats to which the fish and wildlife protection and enhancement plan requirements apply under proposed 10 CSR 40–6.050(7)(C) and 40–6.120(12)(C) are similar to those included in the Federal regulations, the proposed State provisions omit two different categories of species or habitats contained in the Federal provisions.

Unlike the Federal provisions, the proposed Missouri revisions do not include: (1) Species or habitats protected by State laws similar to the Endangered Species Act of 1973 or (2) threatened or endangered species of plants or animals "proposed" as well as listed under the Endangered Species Act of 1973 or similar statutes.

The Director finds that, as submitted, Missouri's proposed revisions at 10 CSR 40–6.050(7)(C) and 40–6.120(12)(C) are no less effective than the counterpart Federal regulations at 30 CFR 780.16(b)(2) and (3) and 784.21(b)(2) and (3) he is approving them. However, Missouri must further amend its regulations at 10 CSR 40–6.050(7)(C) and 40–6.120(12)(C) to provide the following: (1) Amend the introductory language of the subsection so that it clearly indicates that the informational requirements of subsections (C) must be included in the fish and wildlife plan; (2) require a description of the protective measures

that will be used during the active mining phase of operation and require a description of the enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat; and (3) require that the fish and wildlife protection and enhancement plan requirements apply to species or habitats protected by State laws similar to the Endangered Species Act of 1973 and to threatened or endangered species or plants or animals "proposed" as well as listed under the Endangered Species Act of 1973 or similar State statutes.

6. 10 CSR 40–7.011(2) (D), (E), and (F), Bond Requirements

On May 8, 1984, under the authority of 30 CFR 800.11(e), OSM approved an alternative bonding system for Missouri (49 FR 29476). On January 30, 1986, pursuant to 30 CFR 732.17, OSM notified Missouri that it must (1) correct deficiencies in its alternative bonding system, and (2) outline plans to reclaim the backlog of forfeiture sites (Administrative Record No. MO–351). OSM's letter indicated that Missouri's alternative bonding system no longer met the requirement of 30 CFR 800.11(e)(1) to "assure that the regulatory authority will have sufficient resources to complete the reclamation plan for any areas which may be in default at any time.

Missouri responded with the submittal of five separate amendments that addressed various components of its bonding program. Two of the amendments were approved by the Director as adequate partial responses to his January 30, 1986, letter. The three remaining submittals are now being combined into a single future rulemaking action. Following is a summary of the five amendment responses by Missouri.

Missouri's first response was to (1) enact statutory and regulatory changes that increased the bonding amount from $500 per acre to $2,500 per acre for the performance-bonding portion of the system and to (2) increase the ceiling of the Coal Mine Land Reclamation (CMLR) fund from $3 million to $7 million. OSM approved this amendment as an adequate partial response and published notice of this approval in the February 26, 1988, **Federal Register** (53 FR 5766).

Missouri's second response was to enact statutory changes that increased the performance bonding amount from $2,500 per acre up to $10,000 per acre for coal-preparation areas. OSM approved this amendment as an adequate partial response and published notice of this approval in the October 31, 1988, **Federal Register** (53 FR 43868).

Missouri's third response was to enact regulatory changes that would require the minimum amount of bond applied to a single mine to be $10,000. This amendment was submitted to OSM for approval on March 18, 1988, as part of this rulemaking (Administrative Record No. MO–371).

Missouri's fourth response was to enact statutory changes at Mo. Rev. Stat. sections 444.830.1, 444.950.1, .2, .3, and .4, 444.960.1 and .5, and 444.965.1, .2, .3, .4, .5, and .6 by (1) allowing a permittee to post a full-cost performance bond rather than participate in the alternative bonding system, (2) revising the alternative bonding system's use of pit reclamation to phase I reclamation, (3) establishing a minimum bond for small mines, (4) dividing the CMLR fund for two uses, and (5) increasing the CMLR fees and ceiling amounts. This amendment was submitted to OSM for approval on July 8, 1988, and is still awaiting a final rulemaking decision by OSM (Administrative Record No. MO–388).

Missouri's fifth response was to enact implementing regulatory changes consistent with the five provisions described above. This amendment was submitted to OSM for approval on January 12, 1989, and is still awaiting a final rulemaking decision by OSM (Administrative Record No. MO–410).

Due to the complexities involved with the analyses of these proposed revisions, the Director is deferring his decision on Missouri's proposed revisions to 10 CSR 40–7.011(2) (D), (E), and (F) concerning bond requirements. The proposed revisions submitted as Missouri's third response to the January 30, 1986, bonding deficiency letter will be evaluated later with the proposed revisions submitted as Missouri's fourth and fifth responses. Thus, a future rulemaking will provide the complete analysis of three State program amendments concerning Missouri's alternative bonding system.

7. 10 CSR 40–8.040(8), Procedures for Informal Assessment Conference

The State regulations at 10 CSR 40–8.040(8) describe procedures for the informal assessment conference.

a. Missouri proposes to revise the State regulations at 10 CSR 40–8.040(8) by adding subsection (B) to require that the informal assessment conference be held within 60 days of receipt of the written request.

The counterpart Federal regulation at 30 CFR 845.18(b)(1) requires the assessment conference to be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. Missouri's proposed revision would establish a 60-day time-frame that is similar to the Federal regulations' time-frame. The Director, therefore, finds that the proposed revision to 10 CSR 40–8.040(8)(B) is no less effective than the Federal regulation at 30 CFR 845.18(b)(1). He also finds that an element of the required program amendment he placed at 30 CFR 925.16(k) regarding set time periods for holding assessment conferences has been adequately satisfied and he is removing that program amendment requirement.

b. Missouri proposes to revise the State regulations at 10 CSR 40–8.040(8) by adding a subsection (C), stating that failure to hold such conferences within that time period shall not be grounds for dismissal. "That time period" refers to within 60 days that the informal conference is to be held from receipt of a written request for a conference.

The Federal regulation at 30 CFR 845.18(b)(1) states that failure by the regulatory authority to hold a conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

Except for the Federal regulations' ending phrase of "unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay," Missouri's proposed regulations are identical to the Federal regulations. Missouri's proposal to omit this phrase would not make its conference time frame requirements less effective than the Federal standard.

The Director finds that the proposed revision to 10 CSR 40–8.040(8)(C) is no less effective than the Federal regulation at 30 CFR 845.18(b)(1). He also finds that part of the required program amendment he placed at 30 CFR 925.16(k) regarding Missouri's need to add a "grounds for dismissal" statement has been adequately satisfied and he is removing that program amendment requirement.

c. Missouri proposes to revise the State regulations at 10 CSR 40–8.040(8) by adding a subsection (K), stating that, if the settlement agreement is disapproved, or if payment is not made within 30 days, the assessment, as determined by the penalty point system, shall be proposed to the commission.

The counterpart Federal regulation at 30 CFR 845.18(d)(2) states that, if full payment of the amount specified in the settlement agreement is not received by the regulatory authority within 30 days

after the date of signing, the regulatory authority may enforce the agreement or rescind it and proceed according to 30 CFR 845.18(b)(3)(ii) within 30 days from the date of the rescission.

Missouri's proposed revisions would not address the consequences of failure to pay by the 30-day time limit. Proposing the assessment to the commission is not an adequate response. The agreement must be enforced or it must be rescinded with penalty assessment proceeding within 30 days from the date of rescission.

The Director finds that Missouri's proposed revision at 10 CSR 40-8.040(8)(K) is less effective than the Federal regulation at 30 CFR 845.18(d)(2) and he is not approving the revision. He also finds that part of the required program amendment at 30 CFR 925.16(k) regarding the consequences of failure to pay by the 30-day time limit has not been adequately satisfied and he is retaining that program amendment requirement.

IV. Public and Agency Comments

OSM solicited public comment and provided opportunity for a public hearing on the proposed amendment. No public comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11), comments were also solicited from various State and Federal agencies with an actual or potential interest in the Missouri program.

The U.S. Environmental Protection Agency (EPA), Region VII, stated that they had no objection to Missouri's implementation as planned (Administrative Record No. MO-374). The U.S. EPA, Washington, DC, concluded that the proposed amendments to Missouri's program for regulating surface and underground coal mining and reclamation operations demonstrates the legal authority, administrative capability, and technical conformity with controlling Federal SMCRA regulations to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251, *et seq.*) (Administrative Record No. MO-376).

The Advisory Council on Historic Preservation (ACHP) expressed concern that the amendment may not fully meet the requirements of section 106 of the National Historic Preservation Act. They further encouraged OSM to initiate discussions with the Missouri State Historic Preservation Officer (SHPO) to ensure that historic properties are adequately considered (Administrative Record No. MO-373). OSM contacted the ACHP as well as the Missouri SHPO. Both were sent a second copy of the proposed regulation changes for review. OSM, in follow up, received verbal agreement from ACHP and the Missouri SHPO that the proposed Missouri regulations met the requirements of section 106 of the National Historic Preservation Act. By letter dated May 3, 1988 (Administrative Record No. MO-378), the Director of the Missouri Department of Natural Resources, who is also the Missouri SHPO, acknowledged his support of the proposed rule changes.

V. Director's Decision

Except for those provisions discussed in finding 6 and 7c of this rule, the Director approves Missouri's March 18, 1988, proposed amendment.

As discussed in finding 2 of this rule, the Director is requiring a program amendment at 30 CFR 925.16(b)(1) concerning the protection of fish, wildlife, and related environmental values. As discussed in finding 3 of this rule, the Director is requring a program amendment at 30 CFR 925.16(a) concerning the use of technical guidance procedures for evaluating revegetation success. As discussed in finding 4c of this rule, he is requiring a program amendment at 30 CFR 925.16(b)(2) concerning site specific resource needs. As discussed in findings 5a and b of this rule, he is requiring program amendments at 30 CFR 925.16(b) (3) and (4) concerning the fish and wildlife plan. As discussed in finding 6 of this rule, the Director is deferring his decision on bond requirements. As discussed in findings 7a, b, and c of this rule, the Director is revising the required program amendment at 30 CFR 925.16(k) concerning procedures for informal assessment conferences.

The Federal regulations at 30 CFR part 925 codifying decisions concerning the Missouri program are amended to implement this decision. With the exception of typographical errors, this approval is contingent upon the State's promulgation of the proposed revisions in the identical form submitted for OSM's review and approval. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of Interior. The Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to the program are not enforceable by the State until approved by the Director. In his oversight of the Missouri program, the Director will recognize only statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Missouri of only such provisions.

VII. Procedural Determinations

1. National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

VIII. List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 18, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set out in the preamble, title 30, chapter VII,

subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 925–MISSOURI

1. The authority citation of part 925 continues to read:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is amended by adding paragraph (j) to read:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(j) With the exceptions of 10 CSR 40–7.011(2) (D), (E), and (F) concerning bond requirements and 10 CSR 40–8.040(8)(K) concerning the processing of settlement agreements, the following provisions of the Missouri Code of State Regulations (CSR) as submitted to OSM on March 18, 1988, are approved effective June 5, 1990: 10 CSR 40–3.100(2) and 40–3.250(1)(B), Surface and Underground Mining Requirements for the Protection of Fish, Wildlife, and Related Environmental Values; 10 CSR 40–3.120(1), (6)(A), (6)(B)3, and (7)(C)2, and 40–3.270(1), (6)(A), (6)(B)3, and (7)(C)2, Surface and Underground Mining Revegetation Requirements; 10 CSR 40–6.040(3)(B), (11)(B), (C), and (D), and 40–6.110(3)(B), (11) (B), (C), and (D), Surface and Underground Mining Permit Application Requirements for Environmental Resource Information; 10 CSR 40–6.050(7)(B) and (14)(B), and 40–6.120(8)(B) and (12)(B), Surface and Underground Mining Permit Application Requirements for Reclamation and Operations Plans; 10 CSR 40–6.050(7)(C) and 40–6.120(12)(C), Fish and Wildlife Plans; 10 CSR 40–6.070(8)(E), Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions; and 10 CSR 40–8.040(8)(B) and (C), Procedures for Informal Assessment Conferences.

3. Section 925.16 is amended by revising paragraph (k) and adding paragraphs (a) and (b) to read:

§ 925.16 Required program amendments.

* * * * *

(a) By August 6, 1990, to be consistent with the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1), Missouri must amend its program to include those technical guidance procedures that the State considers acceptable for use in evaluating revegetation success.

(b) By August 6, 1990:

(1) To be consistent with the Federal regulations at 30 CFR 816.97(b) and 817.97(b), Missouri must amend its program to prohibit surface mining activity that is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or that is likely to result in the destruction or adverse modification of their designated critical habitats.

(2) To be consistent with the Federal regulations at 30 CFR 780.16(a)(2) and 784.21(a)(2), Missouri must amend its program to require each permit application to include site-specific resource information necessary to address the respective species or habitats when the permit area or adjacent area is likely to include: Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et. seq.*), or those species or habitats protected by similar State statutes; habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

(3) To be consistent with the Federal regulations at 30 CFR 780.16(b) and 784.21(b), Missouri must amend its program to require an operator's fish and wildlife mitigation plan to be based, to the extent possible, on the best technology currently available.

(4) To be consistent with the Federal regulations at 30 CFR 780.16(b) and 784.21(b), Missouri must amend its program to: amend the introductory language of 10 CSR 40–6.050(C) and 40–6.120(C) to indicate that the informational requirements of the subsection must be included in the fish and wildlife plan; require a description of the protective measures that will be used during the active mining phase of operation; require a description of the enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat; and require the fish and wildlife protection and enhancement plan requirements also apply to species or habitats protected by State laws similar to the Endangered Species Act of 1973 and to threatened or endangered species or plants or animals "proposed" as well as listed under the Endangered Species Act of 1973 or similar State statutes.

* * * * *

(k) By August 6, 1990, to be consistent with the Federal regulations at 30 CFR 845.18(d)(2), Missouri must amend its program to establish a date by which any penalty finally assessed in a settlement agreement must be paid and the consequences of failure to pay by that date.

* * * * *

[FR Doc. 90–12984 Filed 6–4–90; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Regulatory Program; Reclamation Board of Review

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of Proposed Amendment RBR #5 to the Ohio regulatory program (hereinafter referred to as the Ohio program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to incorporate changes to the Ohio Reclamation Board of Review (RBR) and to revise the Ohio Revised Code (ORC) and the Ohio Administrative Code (OAC) to be consistent with the corresponding Federal regulations. The proposed amendment would revise the composition of the RBR, increase the per diem pay to RBR members, and revise the standards to be applied concerning awards of costs and expenses, including attorneys' fees, by the RBR.

EFFECTIVE DATE: June 5, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program

amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of the Amendment

On August 10, 1987 (52 FR 29515), the Deputy Director of OSM approved Program Amendment No. RBR–3 which revised the rules of the Ohio RBR at OAC 1513–3–21(E) (3), (4), and (5). These amendments had been required by OSM at 30 CFR 935.16(a) so that the standards used by the RBR to award costs and expenses, including attorney's fees, would be no less effective than the Federal counterparts of 43 CFR Part 4.

During Ohio's promulgation of Program Amendment No. RBR–3, the Ohio Mining and Reclamation Association (OMRA) voiced opposition to the rule change and the RBR withdrew the amendments in a letter dated November 13, 1987 (Administrative Record No. OH–0993). The disputed issues concerning this rule change were subsequently resolved under a settlement agreement filed in *Ohio Mining and Reclamation Association, et al.* v. *Hodel et al.*, Civil Action No. C2–86–0811 (S.D. Ohio, December 23, 1987) between OMRA, the Mining and Reclamation Council of America, and OSM.

By letter dated March 24, 1988 (Administrative Record No. OH–1021), the RBR submitted proposed Program Amendment No. RBR–4 to revise OAC 1513–3–21(E) (3), (4), and (5) to reflect the terms of the settlement agreement. On July 14, 1988 (53 FR 26592), the Deputy Director of OSM approved this amendment.

During Ohio's promulgation of Program Amendment No. RBR–4, the OMRA again voiced opposition to the rule change and the RBR withdrew the amendments in a letter dated October 19, 1988 (Administrative Record No. OH–1106). The disputed issues concerning this rule change were subsequently resolved between Ohio and the OMRA.

By letter dated August 11, 1989 (Administrative Record No. OH–1199), Ohio submitted proposed Program Amendment No. RBR–5. This proposed Program Amendment would revise the Ohio Program at ORC Sections 1513.05 and 1513.13(E) and (F) and at OAC Section 1513–3–21(E).

OSM announced receipt of the proposed amendment in the August 28, 1989, Federal Register (54 FR 35502), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on September 27, 1989.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal Regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program. Any provisions not specifically discussed below are found to be no less effective than the Federal regulations. Provisions which are not discussed below concern nonsubstantive wording changes or revise paragraph notations to reflect organizational changes resulting from this amendment.

1. ORC 1513.05 Reclamation Board of Review

Ohio proposes to amend ORC 1513.05 to alter the composition of the RBR, and to increase the *per diem* pay to Board members. Ohio is proposing that the seven-member Board be composed of two persons who, at the time of their appointment, own and operate a farm or are retired farmers. Additionally, and notwithstanding, Section 1513.04 of the Revised code, one of the appointees shall be a person who, at the time of appointment, is the representative of an operator of a coal mine. One person shall be a representative of the public, one person shall be one who is classified as learned and experienced in modern forestry practices, and one person shall be one who is classified as learned and experienced in agronomy. The remaining member shall be one classified as capable and experienced in earth-grading problems, or a civil engineer. The composition of the Board is proposed to be changed from four members who represent the public and at least one of these shall be an attorney, and one person each classified as learned and experienced in modern forestry practices, agronomy, and earth-grading problems (or a civil engineer). Ohio also proposes to increase the *per diem* pay to Board members from $100 to $150.

There is no direct Federal counterpart to the RBR. The Director finds, however, that the proposed changes are not inconsistent with SMCRA and the Federal regulations and can be approved.

2. ORC 1513.13 Appeals of Notices, Orders, and Decisions

Ohio proposes to amend section ORC 1513.13(E) to set forth the standards to be applied in determining whether an award of costs and attorney's fees is appropriate. The existing language of ORC 1513.13(E) has been amended to state that whenever an order is appealed under ORC 1513.13(E) as a result of any administrative proceeding or action under chapter ORC 1513, at the request of a permittee or any other person, all costs and expenses, including attorney fees for proceedings before the RBR, as determined by the Chief or Board to have been reasonably incurred by the permittee or person for or in connection with his participation in the proceedings may be paid by the Division of Reclamation to the permittee or other person who made the request as the Chief or Board considers proper. The language which is being amended previously provided that such costs may be assessed against either party as a result of any administrative proceeding or judicial review of an order under this section. The proposed revisions delete the current possibility of the award of costs to a person from a permittee. A new sentence has also been added which states that the Chief or the Board shall not award any such costs and expenses to a permittee or any other person unless the Chief or the Board determines that the permittee or other person made a substantial contribution to a full and fair determination of the appeal or administrative proceeding.

In the settlement agreement filed in *Ohio Mining and Reclamation Association, et al.* v. *Hodel et al.*, Civil Action No. C2–86–0811 (S.D. Ohio, December 23, 1987) between the Ohio Mining and Reclamation Association (OMRA), the Mining and Reclamation Council of America, and OSM, OSM agreed to the following: (1) OSM would be willing to review and approve an attorneys' fees rule which authorizes the award of attorneys' fees to permittees, from the State of Ohio, if the permittee participates in any proceeding under Chapter 1513 of the Ohio Revised Code, and upon a finding that the permittee made a substantial contribution to a full and fair determination of the issues, and (2) OSM would not approve an Ohio State program amendment which authorizes the award of attorney fees to permittees, from persons other than the State of Ohio, except as provided in 43 CFR 4.1294(d). The proposed provisions at ORC 1513.13(E) discussed above are consistent with the settlement agreement.

A new paragraph has been added to ORC 1513.13(E) which authorizes the award of costs and expenses, including attorneys' fees, under two circumstances to parties involved in appeals before the RBR. Costs may be awarded to a permittee from a person who initiated an appeal if the permittee demonstrates that a person initiated or participated in such an appeal in bad faith and for the purpose of harassing or embarrassing the permittee. Costs may

also be awarded to the Ohio Department of Natural Resources, Division of Reclamation from the person who initiated an appeal if the Division of Reclamation demonstrates that the person initiated or participated in the appeal in bad faith and for the purpose of harassing or embarrassing the Division of Reclamation.

The proposed provisions are nearly identical to the Federal regulations at 30 CFR 4.1294 (d) and (e). However, the provisions do not make it clear that an assessment of costs may be made against persons who participated in an appeal, as well as the person who initiated an appeal, if the person initiated or particpated in the appeal in bad faith. The Director will only approve the proposed provisions if Ohio's interpretation of the provisions does not require initiators of appeals to pay costs for bad faith participation of another person. Therefore, the Director is approving the proposed provisions with the understanding that the provisions which authorize awards to the permittee, and to the Division of Reclamation from any person will be interpreted by Ohio as authorizing the award of costs and expenses against any person, including the permittee with regard to awards to the Division of Reclamation, who initiated or participated in the appeal if the person initiated or participated in the appeal in bad faith for the purpose of harassing or embarrassing the Division.

A new paragraph ORC 1513.13(F) is being added to state that whenever an order issued under this section or as a result of any administrative proceeding under this chapter is the subject of judicial review, at the request of any party, a sum equal to the aggregate amount of all costs and expenses, including attorneys' fees, as determined by the court to have been reasonably incurred by the party for or in connection with his participation in the proceedings may be awarded to either party as the court, on the basis of judicial review, considers proper. The proposed provision at ORC 1513.13(F) is nearly identical to the language of SMCRA at section 525(e).

With the proposed provisions at ORC 1513.13 (E) and (F) all the persons eligible for awards under SMCRA at section 525(e) and the Federal regulations at 30 CFR 4.1294 are likewise eligible under the proposed provisions at ORC 1513.13 (E) and (F). The Director finds, therefore, that, consistent with the Director's interpretations stated above, the proposed provisions are no less stringent than SMCRA and no less effective than the Federal regulations and can be approved.

3. ORC 1513–3–21 Award of Costs and Expenses

Ohio proposes to amend section 1513–3–21 by deleting subsection (E) and relettering subsections (F) and (G) accordingly. The language in subsection (E) which is proposed to be deleted pertains to the standards for awardng costs and expenses, including attorneys' fees, by the RBR. As noted in Finding 2, Ohio has proposed that standards for awarding costs and expenses, including attorneys' fees be added to ORC 1513.13(E). The Director finds that the proposed changes do not render the Ohio program to be less effective than the Federal regulations nor less stringent than SMCRA and can be approved.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the August 28, 1989 **Federal Register** ended on September 27, 1989. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing requirements at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. No substantive comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Program Amendment RBR #5, as submitted by Ohio on August 11, 1989.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from requirement to prepare a Regulatory Impact Analysis, and regulatory review by OMB is not required.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the Preamble, Title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (nn) is added to read as follows:

§ 935.15 Approval of Regulatory Program Amendments.

* * * * *

(nn) The following amendment to the Ohio permanent regulatory program, as submitted by letter dated August 11, 1989, is approved, effective June 5, 1990. Amendment RBR #5, which consists of revisions to the Ohio Revised Code (ORC) at 1513.05, 1513.13 (E) and (F) and the Ohio Administrative Code (OAC) at OAC 1513–3–21, and which concern the Reclamation Board of Review.

[FR Doc. 90–12895 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3784-8]

South Carolina; Schedule of Compliance for Modification of South Carolina's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region IV.

ACTION: Notice of South Carolina's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadlines for State program modifications and published requirements for States to be placed on a compliance schedule to adopt necessary program modifications. EPA is today publishing a compliance schedule for South Carolina to modify its program in accordance with § 271.21(g) to adopt Federal program modifications.

FOR FURTHER INFORMATION CONTACT: H. Kirk Lucius, Chief, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347-5059.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State's program: (1) Is "equivalent" to the Federal program; (2) is "consistent" with the Federal program and other State programs; and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6926(b)). EPA regulations for final authorization appear at 40 CFR 271.1-271.25. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion on these procedures and deadlines.

B. South Carolina

South Carolina received final authorization for its base hazardous waste program effective on November 22, 1985 (50 FR 46437, November 8, 1985), and for program revisions effective on September 13, 1987 and October 4, 1988 (52 FR 26476, July 15, 1987; 53 FR 29461, August 5, 1988). Today EPA is publishing a compliance schedule for South Carolina to complete program revisions for the following Federal program requirements:

Non-HSWA Cluster III—Deadline: July 1, 1988

Technical Corrections; Identification and Listing of Hazardous Wastes (53 FR 13382-13393, April 22, 1988)

Non-HSWA Cluster IV—Deadline: July 1, 1989

List (Phase 1) of Hazardous Constituents for Ground-Water Monitoring (52 FR 25942-25953, July 9, 1987)

Identification and Listing of Hazardous Waste (52 FR 26012, July 10, 1987)

Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee (52 FR 44314-44321, November 18, 1987)

Hazardous Waste Miscellaneous Units (52 FR 46946-46965, December 10, 1987)

Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators (54 FR 615-617, January 9, 1989)

The State has agreed to complete the needed revisions to its authorized program according to the following schedule:

June 14, 1990 Presentation to the Board of Health and Environmental Cotnrol for approval of a public hearing on State regulatory changes which would parallel Federal regulatory changes

July 30, 1990 Public Hearing

August 10, 1990 Public comment period ends

October 11, 1990 Staff presentation to Board, based on public comments

October 12, 1990 State Register closing date

October 26, 1990 Finalization in State Register

South Carolina expects to submit an application to EPA for authorization of the above mentioned program revisions by December 31, 1990.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: May 16, 1990.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 90-12977 Filed 6-4-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5400 and 5440

RIN 1004-AB66

[AA-230-00-4311-02; Circ. No. 2627]

Sales of Forest Products; General, and Conduct of Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management is amending its regulations to remove the requirement for semiannual reports to Congress of negotiated timber sales over 250 M board feet in 5402.1 and to remove the reference to a bond accepted to secure payment of the first installment in 5441.1-1. The reporting requirements are no longer needed since the Congressional Reports Elimination Act of 1980 repealed the requirement for a semiannual report to Congress contained in the Material Sales Act, and the timber sale contract no longer has a provision for a bond to secure payment of the first installment.

EFFECTIVE DATE: July 5, 1990.

ADDRESSES: Inquiries or suggestions should be sent to: Director (230), Bureau of Land Management, Room 901 Premier Building, 1725 I Street NW., Washington, DC 202405.

FOR FURTHER INFORMATION CONTACT: Richard Bird (202) 653-8864.

SUPPLEMENTARY INFORMATION:

Authority for the Secretary to sell timber without advertising is provided by the Act of July 31, 1947, 61 Stat. 681, as amended, 30 U.S.C. 602. In 1962, the Act of July 31, 1947 (Material Sales Act) was amended to authorize the sale of materials without advertising and competitive bidding if (1) the contract was for the sale of 250 M board feet or less of timber, or if (2) the contract is for the disposal of materials to be used in connection with a public works improvement program for a Federal, State, or local government where the public need will not permit the delay incident to advertising, or if (3) the contract is for the disposal of property for which it is impractical to obtain competition. This amendment also required that a semiannual report to be made to Congress of contracts over 250 M board feet made under clauses (2) and (3). The Congressional Report

Elimination Act of 1980, Public Law 96-470, 94 Stat. 2237, repealed the requirement for the semiannual report to Congress. The final rule changes the regulations to reflect this change in the law by removing the requirement for a semiannual report to Congress.

When the timber sale regulations were amended on September 2, 1982 (47 FR 38697), the provision in § 5461.2(a)(2) for increasing the performance bond to secure payment of the delayed first installment was removed. Therefore, the reference to a bond to secure payment of the first installment in § 5441.1-1 is now removed. The payment referred to in this provision is the delayed payment of the first timber contract installment, which was formerly required by § 5461.2(a)(2) to be covered by a bond.

This rule makes no changes in the substantive or procedural provisions of part 3100 or part 3140. Therefore, in accordance with the provisions of 5 U.S.C. 553, this amendment is published as a final rule with the effective date shown above.

The principal author of the rule is Richard Bird, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Parts 5400 and 5440

Forests and forest products, Government contracts, Land Management Bureau, Public lands, Surety bonds.

For the reasons set out in the preamble, title 43, subtitle B, chapter II of the Code of Federal Regulations is amended as set forth below.

PART 5400—SALES OF FOREST PRODUCTS; GENERAL

1. The authority citation continues to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq., 43 U.S.C. 315, 423, 1181a 16 U.S.C. 607a, and 43 U.S.C. 1701 et seq.

§ 5402.1 [Removed]

2. Section 5402.1 is removed.

PART 5440—CONDUCT OF SALES

1. The authority citation continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 et seq.

2. Section 5441.1-1 is revised to read as follows:

§ 5441.1-1 Bid deposits.

Sealed bids shall be accompanied by a deposit of not less than 10 percent of the appraised value of the timber or other vegetative resources. For offerings at oral auction, bidders shall make a deposit of not less than 10 percent of the appraised value prior to the opening of the bidding. The authorized officer may, in his discretion, require larger deposits. Deposits may be in the form of cash, money orders, bank drafts, cashiers or certified checks made payable to the Bureau of Land Management, bid bonds of a corporate surety shown on the approved list of the United States Treasury Department or any guaranteed remittance approved by the authorized officer. Upon conclusion of the bidding, the bid deposits of all bidders, except the high bidder, will be returned. The deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer unless the deposit is a corporate surety bid bond, in which case the surety bond will be returned to the purchaser.

Dated: May 10, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-12922 Filed 6-4-90; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 91050-0019]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of retention of groundfish; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), is prohibiting further retention of Pacific cod by vessels fishing in the Western Regulatory Area of the Gulf of Alaska area from 12 noon, Alaska Daylight Time (ADT), on May 30, 1990, through December 31, 1990.

DATES: Effective from 12 noon, ADT, on May 30, 1990, until midnight, Alaska Standard Time, December 31, 1990. Comments will be accepted through June 19, 1990.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jessica Gharrett, Resource Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Under § 672.20(c)(3), when the Regional Director determines that the TAC of any target species or of the "other species" category in a regulatory area or district has been reached, the Secretary will publish a notice in the Federal Register declaring that the species or species group is to be treated in the same manner as a prohibited species under § 672.20(e) in all or part of that regulatory area or district.

The 1990 TAC specified for Pacific cod in the Western Regulatory Area is 29,500 mt (55 FR 3223, January 31, 1990). On April 28, 1990, the Regional Director established a directed fishing allowance of 28,470 mt and closed the directed fishery for Pacific cod in the Western Regulatory Area (55 FR 18605; May 3, 1990). The remaining 1,030 mt of Pacific cod were set aside to support other groundfish fisheries in that area. The Regional Director reports that U.S. vessels have caught 29,406 mt of Pacific cod through May 12 in the Western Regulatory Area. At current catch rates, the TAC will be taken on May 30, 1990.

Therefore, pursuant to § 672.20(c)(3), the Secretary is declaring that Pacific cod must be treated in the same manner as a prohibited species in the Western Regulatory Area of the Gulf of Alaska effective 12 noon, ADT, May 30, 1990.

The TAC for Pacific cod in the Western Regulatory Area will be exceeded unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the above address.

Classification

This action is taken under § 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: May 30, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-12897 Filed 6-4-90; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 91050-0019]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of retention of groundfish and notice of closure of directed fishing; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), is prohibiting further retention of sablefish by vessels fishing with hook-and-line gear in the West Yakutat and Southeast Outside/East Yakutat Districts of the Eastern Regulatory Area of the Gulf of Alaska, and establishing a directed fishing allowance and closing the directed fishery for sablefish with hook-and-line gear in the Central Regulatory Area from 12 noon, Alaska Daylight Time (ADT), on May 29, 1990, through December 31, 1990.

DATES: Effective from 12 noon, ADT, on May 29, 1990, until midnight, Alaska Standard Time, December 31, 1990. Comments will be accepted through June 14, 1990.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jessica Gharrett, Resource Management Specialist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Eastern Regulatory Area

Under § 672.24(b)(3)(ii), when the Regional Director determines that the share of the sablefish TAC assigned to any gear for any year and any area or district is reached, further catches of sablefish must be treated as a prohibited species by persons using that type of gear for the remainder of that year.

The 1990 TAC specified for sablefish in the West Yakutat District of the Eastern Regulatory Area is 4,550 mt, of which the hook-and-line share is 4,320 mt, and in the Southeast Outside/East Yakutat District is 5,980 mt, of which the hook-and-line share is 5,680 mt (55 FR 3223, January 31, 1990). The directed fishery for sablefish for vessels using hook-and-line gear was closed in the West Yakutat District on April 16, 1990 (55 FR 14978; April 20, 1990), and in the Southeast Outside/East Yakutat District on April 20, 1990 (55 FR 17442; April 25, 1990). The Regional Director reports that vessels using hook-and-line gear have caught their entire share of sablefish in the West Yakutat and Southeast Outside/East Yakutat Districts of the Eastern Regulatory Area.

Therefore, pursuant to § 672.24(b)(3)(i) and (ii), the Secretary is prohibiting further retention of sablefish by vessels using hook-and-line gear in the West Yakutat and Southeast Outside/East Yakutat Districts of the Eastern Regulatory Area of the Gulf of Alaska effective 12 noon, ADT, May 29, 1990, for the remainder of this fishing year.

Central Regulatory Area

Under §§ 672.24(b)(3)(i) and 672.20(c)(2), when the Regional Director determines that the share of sablefish TAC assigned to any gear for any year and any area or district may be taken before the end of that year, the Secretary, in order to provide bycatch amounts to support other groundfish fisheries, will prohibit directed fishing and establish a directed fishing allowance for sablefish by persons using that type of gear in that area for the remainder of that year.

The 1990 TAC specified for sablefish in the Central Regulatory Area is 11,700 mt of which the hook-and-line share is 9,360 mt (55 FR 3223, January 31, 1990). The Regional Director is establishing a directed fishing allowance of 9,144 mt (9,360 mt minus 216 mt = 9,144 mt) of sablefish for the hook-and-line fishery in the Central Regulatory Area. It has been determined that 216 mt is necessary as bycatch in other groundfish fisheries using hook-and-line gear. At this time, the directed fishing allowance for the Central Regulatory Area has been taken.

In the Central Regulatory Area, delay in closing the directed sablefish fishery for hook-and-line gear would result in attainment of the TAC, and discarding of sablefish caught in other groundfish fisheries. This would result in considerable waste. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for these actions are invited through June 14, 1990. Public comments on this notice of closure may be submitted to the Regional Director at the above address.

Classification

This action is taken under §§ 672.20 and 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: May 30, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-12898 Filed 6-4-90; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the "domestic annual processing (DAP) other fishery" has attained its primary prohibited species catch (PSC) allowance of Pacific halibut, 3,273 metric tons (mt), in the Bering Sea and Aleutian Islands (BSAI) area. Therefore, the Secretary of Commerce (Secretary) is prohibiting any further DAP directed fishing for pollock and Pacific cod, combined, with bottom trawl gear in Zones 1 and 2H. This action is necessary to prevent excessive bycatch of Pacific halibut in the trawl fishery for groundfish in an area of particular importance to the Pacific halibut stock. This action is intended to carry out the objectives of measures to control the bycatch of prohibited species in the trawl fishery for groundfish.

EFFECTIVE DATE: 12 noon, Alaska daylight time (ADT), May 30, 1990, through 2400 December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett (Resource Management Specialist), NMFS, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668, telephone 907-871-7229.

SUPPLEMENTARY INFORMATION: The Secretary approved, on July 7, 1989, Amendment 12A to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands are a (FMP) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 12A was implemented by the Secretary with a final rule published on August 9, 1989 (54 FR 32642), and effective September 3, 1989, through December 31, 1990.

The purpose of Amendment 12A is to limit incidental catches of the prohibited species *C. bairdi* Tanner crab, red king crab, and Pacific halibut by the groundfish fisheries in the BSAI area. Such incidental catches are referred to as bycatches in fisheries targeting other species. The amendment established 20 PSC allowances, 5 PSC allowances in each of four fisheries: The "DAP flatfish fishery", the "DAP other fishery", the "joint venture processing (JVP) flatfish fishery" and the "JVP other fishery".

Each of the 20 PSC allowances prescribed for the 1990 groundfish fisheries appears in the initial specifications notice for 1990 for the BSAI area (55 FR 1434; January 16, 1990). The PSC allowances were based on the anticipated bycatch of prohibited species derived by a mathematical prediction procedure, which used statistical information derived from fishery performance in previous years and projected performance for the 1990 fishing year. The primary PSC allowance for Pacific halibut in the BSAI area for the "DAP other fishery" is 3,273 mt.

Closure

The Regional Director has determined that the primary PSC allowance for Pacific halibut for the "DAP other fishery" in the BSAI area will be reached by May 30, 1990. Under regulations implementing Amendment 12A, when the primary PSC allowance for Pacific halibut for the "DAP other fishery" is reached, Zones 1 and 2H are closed to further directed fishing for pollock and Pacific cod, combined, by DAP vessels using bottom trawl gear.

Therefore, the Secretary, by this notice and under authority of § 675.21(c)(2)(iii), prohibits for the remainder of the fishing year directed fishing for pollock and Pacific cod, in the aggregate, with bottom trawl gear in Zones 1 (statistical areas 511, 512, and 516) and 2H (statistical area 517) by U.S. fishing vessels that process catch on board, or deliver it to U.S. fish processors. Under § 675.20(h)(1), the operator of a vessel is engaged in directed fishing for pollock and Pacific cod, in the aggregate, if he retains at any particular time during a trip an amount of these species combined that is equal to or greater than 20 percent of the aggregate catch of the other fish or fish products retained at the same time on the vessel during the same trip (55 FR 9887; March 16, 1990).

Classification

These actions are taken under §§ 675.20 and 675.21 and they comply with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: May 30, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-12896 Filed 5-30-90; 3:26 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 108
Tuesday, June 5, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

7 CFR Part 1948

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Intermediary Relending Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration proposes to amend its regulations on the Intermediary Relending Program (IRP). This action is needed to correct problems that have been observed during initial implementation of the program. The revisions will provide more specific requirements for security and clarify other miscellaneous requirements to allow loan processing to proceed more smoothly.

DATES: Comments must be received on or before July 5, 1990.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Farmers Home Administration, USDA, room 6327, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 475-3819.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

Intergovernmental Review

This program will be listed in the Catalog of Federal Domestic Assistance under number 10.439, "Intermediary Relending Program." It is subject to intergovernmental consultation in accordance with Executive Order 12372, and as stated in FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administation Programs and Activities."

Environmental Impact Statement

This proposed action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Background

This regulatory package is an FmHA initiative to enhance the IRP through revisions based on experience with implementation of the program. The primary changes proposed include the following:

1. Requirements for fidelity bond coverage are clarified. The required bond coverage will be approximately the amount of an annual installment on the FmHA loan. Also, FmHA may require the intermediary to carry other insurance as appropriate.

2. More specific guidance is provided for security for IRP loans from FmHA. FmHA will take assignments on collateral pledged by ultimate recipients. However, the requirements for FmHA concurrence in the security the intermediary plans to take is removed. The assignments will normally not be filed unless FmHA determines it is necessary to protect the government's interest. Intermediaries will retain the authority to manage the relending program as if there were no assignments, unless FmHA terminates the authority after an event of default.

Lists of Subjects in 7 CFR Part 1948

Credit, Business and Industry, Economic Development.

Accordingly, FmHA amends title 7, chapter XVIII, of the Code of Federal Regulations as follows:

PART 1948—RURAL DEVELOPMENT

1. The authority citation for part 1948 continues to read as follows:

Authority: 7 U.S.C. 1932 note; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Intermediary Relending Program (IRP)

§ 1948.103 [Amended]

2. Section 1948.103 is amended by removing paragraph (b)(1) and redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2).

3. Section 1948.113 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1948.113 Security.

(a) *Loans to intermediaries.* Unless otherwise approved by FmHA, security for the FmHA loan will be separate and apart from security for other loans for which the intermediary is either maker or payee. Security for all loans to intermediaries must be such that the repayment of the loan is reasonably assured, when considered along with the intermediary's financial condition, work plan, and management ability. It is the responsibility of the intermediary to make loans to ultimate recipients in such a manner that will fully protect the interests of the intermediary and the Government.

(1) Security for such loans may include but is not limited to:

(i) Any realty, personalty, or intangibles capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of FmHA; and

(ii) Any realty, personalty, or intangibles capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of FmHA.

(2) Security will normally consist of a lien on the IRP revolving fund. FmHA will obtain assignments of security pledged by ultimate recipients including an assignment of the promissory notes given by the ultimate recipients and take possession of the promissory notes. Normally, the assignments will not be filed in the public records. They will be held by FmHA and may be filed at the sole discretion of FmHA, if FmHA determines the filing is necessary to protect the Government's interest.

(b) *Loans from intermediaries to ultimate recipients.* Security requirements for loans from intermediaries to ultimate recipients will be negotiated between the intermediaries and ultimate recipients.

* * * * *

4. Section 1948.118 is amended by adding paragraphs (a)(7)(v) and (a)(8) and revising paragraph (b)(7) to read as follows:

§ 1948.118 Loan agreements between FmHA and the intermediary.

* * * * *

(a) * * *

(7) * * *

(v) Intermediaries will provide fidelity bond coverage for all persons who have access to intermediary funds. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. FmHA may also require the intermediary to carry other appropriate insurance, such as public liability, workers compensation, and/or property damage.

(A) The amount of fidelity bond coverage required by FmHA will normally approximate the total annual debt service requirements for the FmHA loans.

(B) Form FmHA 440–24, "Position Fidelity Schedule Bond," may be used. Similar forms may be used if determined acceptable to FmHA. Other types of coverage may be considered acceptable if it is determined by FmHA that they fulfill essentially the same purpose as a fidelity bond.

(C) Applicants must provide evidence of adequate fidelity bond and other appropriate insurance coverage by loan closing. Adequate coverage in accordance with this section must then be maintained for the life of the loan. It is the responsibility of the intermediary and not that of FmHA to assure and provide evidence that adequate coverage is maintained. This may consist of a listing of policies and coverage amounts in annual reports required by paragraph (b)(4) of this section, or other documentation.

(8) *Authority to operate.* The loan agreement will provide that the intermediary has permission and authority to collect on all notes given to it, service all loans it makes, and manage the relending program as if FmHA had not taken assignments on security pledged by ultimate recipients. It is the responsibility of the intermediary to make and service loans to ultimate recipients in such a manner that will fully protect the interests of the intermediary and the Government. After an event of default by the intermediary, FmHA may terminate this permission and authority by providing the intermediary with written notice.

(b) * * *

(7) To secure the indebtedness by pledging its portfolio of investments derived from the proceeds of the loan award, including providing assignments to FmHA of security pledged by ultimate recipients including the promissory notes of ultimate recipients and transferring possession to FmHA of promissory notes given by ultimate recipients, and/or pledging its real and personal property, and other rights and interest as FmHA may require.

* * * * *

Dated: April 9, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90–12970 Filed 6–4–90; 8:45 am]

BILLING CODE 3410–07–M

Food Safety and Inspection Service

9 CFR Parts 318, 320, and 381

[Docket. No. 89–026N]

RIN 0583–AB19

Heat-Processing Procedures, Cooking Instructions, and Cooling, Handling, and Storage Requirements for Uncured, Comminuted Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is soliciting comments, information, scientific data, and recommendations regarding heat-processing, cooking instructions, and cooling, handling, and storage requirements for various uncured, comminuted, heat-processed meat and poultry products. The Agency is considering rulemaking that would mandate processing procedures to ensure that these products in question would not harbor or promote the growth of pathogenic microorganisms after processing. The Agency would like more information prior to undertaking any such rulemaking.

DATES: Comments must be received on or before September 4, 1990.

ADDRESSES: Written comments may be mailed to: Policy Office, Attn: Linda Carey, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Dr. Karen Wesson, Acting Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–3840.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this action. Written comments should be sent to the Policy Office at the address shown above and should refer to the docket number located in the heading of this document. Any person desiring opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Dr. Wesson so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this notice will be available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) require the Secretary of Agriculture to administer an inspection program that assures consumers that meat and poultry products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged.

Elsewhere in this issue of the Federal Register is a Notice of Proposed Rulemaking establishing processing controls for uncured, heat-processed meat patties. It explains the public health concerns that led to the proposal and should be read in conjunction with

this notice. It is a reproposal of a similar proposal to establish meat patty processing controls published December 27, 1988 (53 FR 52179). The December proposal generated numerous comments, consideration of which led to the decision to repropose. Because many comments on the December 27 proposal also asserted that it was deficient in its scope and application (see discussion of comments in the preamble to the proposal elsewhere in this issue of the Federal Register), and because FSIS has subsequently obtained information that indicates that there may be a public health concern with uncured, comminuted, heat-processed meat food and poultry products other than meat patties, the Agency is issuing this notice to obtain comments, information, scientific data, and recommendations on the need for processing controls covering other heat-processed products that are subject to similar microbiological threats.

Solicitation of Information

The Agency invites public comments and solicits information, scientific data, and recommendations on a number of issues, discussed below, which are related to but go beyond the scope of the proposal elsewhere in this issue of the Federal Register to establish processing controls for uncured, heat-processed meat patties. The Agency is interested in receiving information addressing its concern that various other uncured, comminuted heat-processed meat food products and poultry products may present an increased risk to consumers, and that additional regulatory requirements may be appropriate. Comments should document relevant experiences with these products as well as provide any supporting scientific data. The Agency will assess the information received to determine if it should propose regulations to expand processing controls covering uncured, comminuted, heat-processed meat food products and poultry products in addition to meat patties.

Affected Products

The Agency is considering the merits of issuing a proposed rule that would apply requirements to other products, processing procedures similar to those being proposed for heat-processed, uncured meat patties. Products of most concern are heat-processed, uncured, comminuted meat products—formed or unformed—including but not limited to nuggets, fritters, meatballs, crumbles, Jamaican style patties, and loaves. Such products are manufactured similarly to patties and represent similar public health risks.

In addition, the Agency would consider proposing that heat-processed, uncured, comminuted poultry products (including patties) comply with similar heat-processing, cooling, handling, and storage requirements as heat-processed, uncured, comminuted meat products.

Products that are not heat-processed, but which may appear to be heat-processed because they bear artificial char-marks made by applying caramel stripes to the raw product, also may be of regulatory concern. Although the Agency has no information that consumers are mistaking these raw products for ready-to-eat products, the Agency invites comments and supporting scientific data on this point.

FSIS is soliciting comments, and supporting information and scientific data on whether and if so, how, it should further regulate these products. Comments are especially desired on the following elements which the Agency has tentatively concluded would be part of any such regulation.

Written Processing Procedure on File

As part of an inspection system relying, in part, on Hazard Analysis and Critical Control Point (HACCP) principles, an establishment should have on file a written processing procedure for each heat-processed product. A written procedure, identifying the critical control points (CCP's), process control limits (PCL's), monitoring activities (MA's), and auxiliary control points would define the process and would be an enormous aid to the establishment in controlling the process and to the Agency in monitoring it. Deviations from the written process would be an indication that the process is producing potentially hazardous product.

The Agency is considering the need to make these procedures mandatory. The processing procedure description would have to contain current, accurate information, and the establishment would have to use the procedure it selects. The selected written procedure would have to be on file in the establishment, and be available to any duly authorized representative of the Secretary.

Processing Authority

The Agency is considering the proposal of a rule to allow alternative processing procedures for preparing fully-cooked meat and poultry products. The proposal elsewhere in this issue of the Federal Register mandates one set of procedures that applies to all affected establishments. It may be possible to permit a processing authority to establish the processing procedure to be used, including the temperature/time combination required to make the heat-processed products safe. This would increase flexibility and allow the application of new and improved technology to achieve the purposes of this regulation. The establishment would still be required to create and file a written process and conduct periodic microbiological sampling. The level of heat-processing lethality to microorganisms, the sanitation procedure, the validation and verification procedure, and the handling of process deviations still would be prescribed by the Agency.

A processing authority would be defined as a person or organization who has expert knowledge of safe processing procedures, has access to facilities and equipment for determining such processing procedures, and is designated by an establishment to make such determinations. The Agency would not require the processing authority to have specific credentials; however, initial validation and periodic verification steps (described below) would be added to the processing requirements to assure the safety of the process. The processing authority-approved procedure would be required to address the following critical control areas: Raw material handling, non-refrigerated temperature exposure, heat-processing, cooling, and sanitary handling and storage practices. The CCP's, PCL's, and MA's could be different than those of the specified processing procedure. All support documentation for the processing procedure from research, the scientific literature, and risk assessment would be on file in the establishment and available for review as a part of the processing procedure.

The processing authority-approved processing procedure would only apply to fully-cooked product; less-than-fully-cooked products would be required to adhere to the processing procedure in the regulation.

Microbiological Sampling for Validation and Verification

The Agency is considering proposing microbiological validation and verification as checks on the adequacy and continued, proper operation of the processing procedure for each fully-cooked heat-processed product. The organisms currently of concern are *Escherichia coli* (*E. coli*), *Listeria monocytogenes* (*L. monocytogenes*), and *Salmonella*. The Agency is considering proposing to allow any processor selected private laboratory to conduct the microbiological analysis, without

need for accreditation or approval by FSIS. FSIS can always submit samples to FSIS laboratories to monitor microbiological control.

A valuable part of any HACCP-based system is a periodic, independent check—validation—of the system design to assure it is adequate and another check—verification—of the system to assure it is continuously functioning as designed. Since partially-cooked and char-marked products are not sufficiently heat-processed to destroy food-borne pathogens, no microbiological analyses would be conducted on these type products. However, for fully-cooked products, the establishment would be required to implement a validation and verification testing program for detection of *E. coli, L. monocytogenes,* and *Salmonella.*

Recordkeeping

The Agency is considering proposing more detailed recordkeeping which would include maintenance of files at each establishment preparing uncured, heat-processed product; a complete, current written processing procedure for each such product; documentation of all monitoring activities, whether observations or measurements; laboratory results; and corrective actions taken in response to any process deviations. Recordkeeping is essential for proper monitoring of a HACCP-based processing procedure.

The preamble to any regulations which might be proposed would include a discussion of the comments received in response to this notice.

Done at Washington, DC, on May 30, 1990.

Lester M. Crawford,

Food Safety and Inspection Service.

[FR Doc. 90-12853 Filed 6-4-90; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Reg. C; Docket No. R-0695]

Home Mortgage Disclosure; Intent To Grant an Exemption From HMDA for State-Chartered Financial Institutions in Massachusetts

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to grant a state exemption from HMDA and Regulation C.

SUMMARY: Financial institutions subject to the Federal Home Mortgage Disclosure Act (HMDA) and its implementing rule, Regulation C, may receive an exemption from these federal provisions if the Board determines that the institutions are subject to substantially similar state mortgage disclosure requirements and the state law also contains adequate provisions for enforcement. The Massachusetts Banking Commission has applied for an exemption from HMDA and Regulation C for certain state-chartered financial institutions in Massachusetts, based on recent changes in that state's law. The Board is publishing for public comment notice of its intention to grant an exemption from the federal requirements for certain state-chartered financial institutions in Massachusetts.

DATES: Comments must be received on or before July 5, 1990. The effective date for the exemption, if adopted, would be January 1, 1990.

ADDRESSES: Comments should refer to Docket Number 0695 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to Room B-2222 of the Board's Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building courtyard on 20th Street NW., (between Constitution Avenue and C Street NW.) any time. The application materials submitted by the Massachusetts Office of the Commissioner of Banks in support of the exemption request and comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office Room B-1122 of the Eccles Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: W. Kurt Schumacher, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412; for the hearing impaired *only,* contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION: The Board's Regulation C (12 CFR part 203) implements the Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 *et seq.*). The regulation and the act require financial institutions that have over $10 million in assets and have offices in metropolitan statistical areas (MSAs) to annually disclose to their federal supervisory agencies certain information regarding their home purchase and home improvement loans. However, the Board may grant financial institutions an exemption from compliance with the federal laws if it determines that they are subject to state provisions that are substantially similar to the federal requirements and contain adequate provisions for enforcement. Conversely, exemptions are subject to termination if the Board determines that a state law no longer imposes requirements substantially similar to the federal law or does not adequately ensure enforcement.

In 1976 certain state-chartered institutions in Massachusetts were granted an exemption by the Board based on the Board's finding that substantial similarity of laws and adequate provisions for enforcement existed at that time. This exemption was continued by the Board in 1982 based on amendments to the state law that conformed with revisions made to the federal provisions. In 1989, the Financial Institutions Reform, Recovery, and Enforcement Act made major revisions to HMDA. (FIRREA, Pub. L. No. 101-73, section 1211, 103 Stat. 183 (1989).) The Board subsequently published revisions to Regulation C to implement these statutory changes (54 FR 51356, December 15, 1989). Based on the Board's determination that substantial similarity no longer existed as a result of the FIRREA amendments, the Board published an order terminating the exemption for state-chartered financial institutions in Massachusetts, effective on January 1, 1990 (55 FR 5443, February 15, 1990).

Massachusetts has applied for a new exemption for certain state-chartered financial institutions from the revised HMDA and Regulation C, based on changes the Office of the Commissioner of Banks has made to the applicable state provisions. These amended provisions are found in its Administration Bulletin, 18-2C (revised) of March 12, 1990. The Board's preliminary determination is that the revised law is substantially similar to the federal requirements. The Board has also determined that adequate provisions for enforcement continue to exist. Like revised Regulation C, the Massachusetts law requires the financial institutions to report the application for home purchase and home improvement loans they receive, as well as the institutions' origination and purchase of these types of loans. Institutions would report information on the location of the properties to which the covered loans or applications relate, and information concerning the race or national origin, sex, and income of applicants and borrowers. The institutions also would be required to disclose the type of purchaser for loans that they sell. The Massachusetts

provisions are to be carried out on reports conforming to the loan application register prescribed by Regulation C. Finally, adequate provisions for enforcement would exist because violators of the Massachusetts law would continue to be subject to the issuance of a cease and desist order by the Commissioner, in addition to the imposition of other penalties and sanctions.

The Massachusetts home mortgage disclosure law covers the majority-owned subsidiaries of state-chartered depository institutions, in addition to the depository institutions themselves. Pursuant to an April 30, 1990 Opinion from the Banking Commissioner that accompanied the Massachusetts application, these subsidiaries will file separate reports from their parent institutions with the Commissioner. Additionally, the Opinion makes clear that majority-owned non-depository subsidiaries are deemed to have a home or a branch office in an MSA if they take applications for, originate, or purchase five or more home purchase or home improvement loans in that MSA during the previous calendar year. The incorporation of these provisions by the Commissioner further ensures conformity with existing federal requirements.

The exemption from HMDA and Regulation C would not apply to non-depository subsidiaries of Massachusetts-chartered bank holding companies or savings association holding companies, or to independent mortgage lenders licensed in Massachusetts. These financial institutions in Massachusetts would continue to be subject to the federal law.

The Board proposes to grant an exemption for state-chartered financial institutions in Massachusetts and their majority-owned subsidiaries from compliance with HMDA and Regulation C, effective on January 1, 1990. Any final order granting an exemption would require the Commissioner to undertake to advise the Board within 30 days of the occurrence of any change in the applicable laws of Massachusetts. It would also require the Commissioner to submit the annual disclosure reports it receives from state-chartered financial institutions to the Federal Financial Institutions Examination Council (FFIEC) or its designee.

If after a 30-day comment period the Board confirms that this exemption is warranted, an order will be issued granting the exemption. In that event, state-chartered financial institutions in Massachusetts would comply with the data collection requirements of the state law as of January 1, 1990. They would file their annual report with the Massachusetts Commissioner of Banks, and not with a federal supervisory agency. The Massachusetts Commissioner of Banks would then submit the institutions' reports to the FFIEC for compilation and aggregation. An exemption from the federal requirements would thus allow the institutions covered by the exemption to avoid the duplicative filing of similar reports with two separate authorities.

Interested persons are invited to submit written comments on this proposed exemption. The comments received will be made available for public inspection and copying upon request, except as provided in § § 261.6(b) and 261.8 of the Board's rules regarding availability of information (12 CFR 261.6 *et seq.*). The application for exemption by the Massachusetts Office of the Commissioner of Banks is also available for public inspection and copying upon request.

Board of Governors of the Federal Reserve System, May 29, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-12833 Filed 6-4-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-66-AD]

Airworthiness Directives; Airbus Industrie Model A320-111, A320-211, and A320-231 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Airbus Industrie Model A320-111, A320-211, and A320-231 series airplanes, which would require the installation of wiring and electronic components in the landing gear retraction system. This proposal is prompted by reports of failure of the landing gear to continue to retract during the simulated failure of an alternator on take-off. This condition, if not corrected, could result in excess drag, failure to achieve climb performance, and loss of obstacle clearance margins.

DATES: Comments must be received no later than July 27, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-66-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington..

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113, telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-66-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction General de L'Aviation Civile (DGAC), which is the

airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Airbus Industrie Model A320-111, A320-211, and A320-231 series airplanes. During a flight test simulating an engine failure at take-off, the landing gear failed to retract due to loss of electrical power to relay 48GA. The loss of electrical power to relay 48GA cuts off hydraulic power to the retraction system of the landing gear, which extends by gravity and locks in the down position. This condition, if not corrected, could result in excess drag, failure to achieve climb performance, and loss of obstacle clearance margins. Airbus Industries has issued Service Bulletin A320-32-1035, Revision 2, dated December 18, 1989, which describes procedures for the installation of wiring and electronic components in the landing gear retraction system. The DGAC has classifed this service bulletin as mandatory, and has issued Airworthiness Directive 90-026-007(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the installation of wiring and electronic components in the landing gear retraction system, in accordance with the service bulletin previously described.

It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $335. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,800.

The regulations proposed herein would not have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows.

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); AND 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A320-111, -211, and -231 series airplanes, certified in any category. Compliance is required within 45 days after the effective date of this AD, unless previously accomplished.

To prevent failure of the landing gear to retract following takeoff, accomplish the following:

A. Install wiring and electronic components in relay 48GA's energization system, in accordance with Airbus Industrie Service Bulletin A320-32-1035, Revision 2, dated December 18, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Avionics Inspector (PAI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 22, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-12917 Filed 6-4-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 703]

RIN 1512-AA07

Mt. Harlan, CA (89F-39P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), is considering the establishment of a viticultural area located entirely within San Benito County, California to be known as "Mt. Harlan." This proposal is the result of a petition submitted by Mr. Josh Jensen, General Partner, Calera Wine Company. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. The establishment of viticultural areas also allows wineries to specify further the origin of wines they offer for sale to the public.

DATES: Written comments must be received by July 20, 1990.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 703). Copies of the petition,

the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF reading room, Disclosure Branch, room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin. Section 4.25a(e)(1), title 27, CFR defines an American viticultural area as a delimited grape-growing region which has been delineated in subpart C of part 9.

Section 4.25a(e)(2), title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area to be known as Mt. Harlan. Mr. Harlan has a prominent 3,274 foot peak, and is in the upper elevations of the Gabilan (also known as Gavilan) Mountain Range. The Gabilan Range is a short mountain range, the watershed of which serves as the boundary line between San Benito and Monterey counties.

The proposed Mt. Harlan viticultural area lies inland, approximately twenty-five miles east of Monterey Bay and nine miles south of the city of Hollister. The eastern border of the proposed viticultural area nearly abuts the approved viticultural areas of "Cienega Valley," "Lime Kiln Valley" and "San Benito," but is included in none. The petitioner claims that the combined effects that unique soil composition, elevation and microclimate have upon the production of grapes grown in the proposed area distinguish it from the other viticultural areas in San Benito County which are at lower elevations. The proposed viticultural area consists of approximately 7,440 acres and measures six miles at its widest point east-west and three miles north-south. Total vineyard acreage at this time consists of 44 acres with plans to establish more than 100 additional acres. Both the planned and current vineyards are planted at an elevation of around 2,200 feet, distinguishing them from any other vineyards in San Benito County.

1. Evidence That the Name of the Area Is Locally or Nationally Known

A. Historical Name Recognition and Usage

"Mt. Harlan" is named for Ulysses Grant Harlan, a rancher who settled in the northwestern region of San Benito County between 1860 and 1880. A map produced by the Department of the Interior in 1884 shows the location of two homesites for U.G. Harlan in this area: "Harlan's Cabin" in section 28, Township 14 South, Range 5 East; and "Harlan's Upper Cabin", in section 23 of the same township and range. According to the petition, the Harlan family was well established in the area by 1884. There are direct descendants of Ulysses Grant Harlan in the area to this day.

B. Current Name Recognition and Usage

The petition states that because of its prominence, Mt. Harlan is firmly fixed as a place name and landmark, and is currently recognized and referred to as a distinct region of San Benito County. The California Department of Forestry, the California Department of Fish and Game, and the United States Geological Survey Division of the Department of the Interior, all use Mt. Harlan to pinpoint areas of interest respective to their department's particular needs. The name is also used to identify the area surrounding the summit.

It was the size of Mt. Harlan in relation to the surrounding features in this area of the county which led the United States Geographical Survey ("U.S.G.S.") to name the 7.5 minute topographic map quadrangle of this region, "Mt. Harlan." U.S.G.S. states on its field report name sheet that the name Harlan, as attached to the mountain, has been in local usage for over sixty years. This fact is corroborated by the appearance of Mt. Harlan on a map of California produced in 1928.

The U.S.G.S. map also uses the Harlan name for physical features other than the mountain. Harlan Creek flows from the area south of Mt. Harlan to Grass Valley in the north. Harlan Mountain Road connects the area west of the summit with the area known as Lime Kiln, a low-lying area to the east. Local residents are familiar with both Harlan Mountain Road and Harlan Creek.

2. Historical or Current Evidence That the Boundaries of the Proposed Viticultural Area Are as Specified in the Petition

The petitioner submitted two U.S.G.S. Quadrangle (7.5 Minute Series) maps titled "Mt. Harlan" and "Paicines." The specific description of the boundaries of the proposed viticultural area would be as described in the proposed regulations. The peak of Mt. Harlan is in the center of the proposed viticultural area. The western boundary is the ridge top which serves as the dividing line between Monterey and San Benito Counties and also the watershed division. The boundary also follows, in part, two drainage channels: Thompson Creek to the south and Pescadero Creek to the west. The 1,800 foot contour defines the remainder of the proposed viticultural area.

The petitioner claims that the preponderance of geological, geographical, historical, and contemporary evidence supports the boundaries proposed in the petition.

3. Evidence Relating to the Geographic Features (Climate, Soil, Elevation, Physical Features, Etc.).

A. Climate; Elevation; Aspect

According to the petition, the vineyards around Mt. Harlan are located at an elevation of around 2,200 feet where special microclimate conditions exist. The proposed Mt. Harlan viticultural area is distinguished from the lower elevations and valley floor by (1) Cooler temperatures, (2) less incidence of fog, and (3) higher rainfall with less danger of frost as a result of differing air drainage on upland and lowland areas.

According to the Soil Survey of San Benito County (hereafter, Soil Survey), the average annual temperature within the petitioned area is between 56 and 60 degrees F. This contrasts with the warmer average annual temperatures of Lime Kiln and Cienega Valleys to the northeast (60–62 degrees F.).

The petitioner states that this dissimilarity in temperature translates into differing maturation periods for mountain grapes and valley grapes. In the mountains, the cooler temperatures retard the ripening of the grapes. Therefore, more time is required for the grapes to reach acceptable sugar levels. The warmer temperatures of the valley floor allow the varieties planted there to ripen earlier. Generally, harvest will occur two to four weeks later in Mt. Harlan than in Lime Kiln and Cienega Valleys. This difference in harvest dates further distinguishes the proposed area from its immediate neighbors to the east.

According to the petition, fog also plays a major role in distinguishing the proposed area. Because of the higher elevations at Mt. Harlan, fog is not nearly so prevalent as it is in Cienega and Lime Kiln Valleys. As the air over the California Central Valley heats each morning, it rises, creating a suction effect that pulls the moist Pacific Ocean air inland. The Gabilan Range acts as a natural barrier to this eastward flowing cool air, keeping the cooling, moist breezes west of the valley areas. Yet the Pacific air from Monterey Bay flows into the interior through Chittenden Pass and Pacheco Pass, bringing the effects of fog and moist air through San Benito County and into the Central Valley.

As the fog enters Cienega and Lime Kiln Valleys it may often reach the 1,400 foot elevation. At the same time that vineyards in Cienega and Lime Kiln Valleys are blanketed under fog, the vineyards on Mt. Harlan are exposed to full sun. When the fog occasionally does reach the mountain vineyards, it burns off early in the morning, sometimes a full two hours ahead of the valley. The result is more hours of sunlight on Mt. Harlan than in the valleys.

Rainfall also distinguishes the proposed area from the neighboring viticultural areas. The disparity in rainfall between Cienega/Lime Kiln Valleys (average 16 inches annually) and Mt. Harlan (35 to 40 inches annually) is a major point of distinction.

B. Soils; Geology

The petition states that in Lime Kiln Valley and in Cienega Valley the dominant soil series comprising the vineyards is the Hanford series.

The Soil Survey characterizes this series as lowlands soils which are "nearly level to sloping" and as "occurring on flood plains and fans." They occur primarily in the larger valleys. According to the Soil Survey, bedrock or hardpan is always reached at depths greater than five feet. The average depth of these soils is 70 inches. The available water holding capacity ranges from 7.5 to 8.5 inches per representative soil profile. Because they are lowland soils, they exhibit very slow runoff and only slight to moderate erosion potential. In contrast to the lowland soils which are present in Lime Kiln Valley and Cienega Valley, upland soils of the Sheridan series comprise nearly 70% of the soils in the proposed Mt. Harlan viticultural area. These are mountainous soils which, as noted in the Soil Survey, occur west of Cienega Road and northwest of Line Kiln Road, the region to which the petition is addressed. Bedrock or hardpan may be reached in as little as 1.5 feet from the surface. The average soil depth is 3.5 feet. The runoff is rapid, a natural result of the slope and elevation of the area (anywhere from 15%–75% slope). Therefore, the available water holding capacity ranges from two to seven inches per representative profile. Concomitantly, the erosion potential is severe to very severe. Associated with the Sheridan soils are the Cieneba and Auberry series which together make up the remaining 30% of the soils in the proposed viticultural area. Both associated series are upland soils with similar slope to the Sheridan series (15%–75%). All three soil series exhibit similar erosion potential and available water holding capacity. The petition states that, in addition to the uniformity of its soil characteristics, Mt. Harlan contains an important and distinguishing geological feature—the presence of limestone. In discussing the Cieneba soils series, the Soil Survey, notes that there "are a few small areas of limestone * * * in the mountains to the west of Cienega Road." In addition, the soil Survey notes that within the Sheridan series are "areas of soils underlain by limestone." A special report issued by the California Division of Mines corroborates the findings of the soil survey: "Limestone deposits of different sizes are found in the Mt. Harlan vicinity of Cienega Valley between Pescadero Canyon and McPhails Peak." These citations place outcroppings of limestone within the petitioned area and not within Cienega Valley or Lime Kiln Valley in which the soils overlie a bedrock of limestone and dolomite.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a subsantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. chapter 35, and its implementing regulation, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. The document proposes boundaries for "Mt. Harlan," delineating the area the petitioner considers to be mountainous in character. However, comments concerning other possible boundaries or names for this proposed viticultural area will be given full consideration.

ATF is particularly interested in comments concerning the eastern border of the proposed area. The eastern border of the proposed Mt. Harlan viticultural area follows the 1,800-foot contour line which nearly abuts the Lime Kiln and Cienega Valley viticultural areas which have their border on the 1,400-foot

contour line. ATF understands that there are no vineyards or grape growing in the 400-foot gap between the three areas. Should the eastern boundary of the proposed Mt. Harlan viticultural area meet the western boundary of the Lime Kiln and Cienega Valley viticultural areas? Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

27 CFR part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—[AMENDED]

Par. 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR part 9, subpart C, is amended to add the title of § 9.131 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.131 Mt. Harlan.

Par. 3. Subpart C is amended by adding § 9.131 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.131 Mt. Harlan.

(a) *Name.* The name of the viticultural area described in this section is "Mt. Harlan."

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the "Mt. Harlan" viticultural area are two U.S.G.S. Quadrangle (7.5 Minute Series) maps. They are titled:

(1) Mt. Harlan, California (Photorevised (1984)).

(2) Paicines, California (Photorevised (1984)).

(c) *Boundaries.* (1) The point of beginning is the unnamed 3,063' peak on the county line between San Benito and Monterey Counties in Township 14 S., Range 5 E., section 34 of the "Mt. Harlan," California Quadrangle map.

(2) From the point of beginning on the Mt. Harlan Quadrangle map proceed in a generally northwesterly direction along the county line through sections 34 and 33, briefly into section 28 and back through section 33, and then through sections 32, 29, and 30 all in Township 14 S., Range 5 E., to the point at which the county line intersects the line between sections 30 and 19 of said Township and Range.

(3) Thence proceed in a straight line northeast approximately 750 feet to the commencement of the westernmost stream leading into Pescadero Creek. The stream commences in the southwest corner of section 19 in Township 14 S., Range 5 E.

(4) Thence following the stream in a northeasterly direction to its intersection with the 1,800-foot contour line near the center of section 19 in Township 14 S., Range 5 E.

(5) Thence following the 1,800' contour line in a southeasterly and the northeasterly direction through sections 19, 20, 17, 16, 15, 14, then through the area north of section 14, then southerly through section 13 on the Mt. Harlan Quadrangle map and continuing on the "Paicines," California Quadrangle map to the point at which the 1,800-foot contour line intersects the line between sections 13 and 24 of Township 14 S., Range 5 E.

(6) Thence along the 1,800' contour line through section 24, back up through section 13, and then in a southerly direction through sections 18, 19, and 30 (all on the Paicines Quadrangle map), then westerly through section 25 on the Paicines Quadrangle map and continuing on the Mt. Harlan Quadrangle map, and then through section 26 to the point of intersection of said 1,800' contour and Thompson Creek near the center of section 26 in Township 14 S., Range 5 E., on the Mt. Harlan Quadrangle map.

(7) Thence southwesterly along Thompson Creek to its commencement in the northwest corner of section 34, Township 14 S., Range 5 E.

(8) Thence in a straight line to the beginning point.

Signed: May 17, 1990.

Stephen E. Higgins,

Director.

[FR Doc. 90-12801 Filed 6-4-90; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Withdrawal.

SUMMARY: By a letter dated April 12, 1990, Indiana withdrew an amendment to the Indiana regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) concerning delegation of authority. OSM is announcing the suspension of formal processing of the amendment.

DATES: This withdrawal is effective June 5, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program

amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission and Discussion of Amendments

On January 25, 1990, OSM published a notice in the **Federal Register** (55 FR 2536) announcing receipt and soliciting public comment on the program amendment for delegation of authority. By letter to Indiana on March 21, 1990 (Administrative Record Number IND–0762), OSM identified deficiencies in the program amendment, as submitted. By letter dated April 12, 1990, Indiana notified OSM that the Indiana legislature recently passed legislation that will enact major revisions to the responsibilities of the Natural Resources Commission and the Director of the Department of Natural Resources under I.C. 13–4.1. Consequently, Indiana is withdrawing the proposed program amendment on delegation of authority pending a review of the recent legislation. The Director is announcing the withdrawal of the proposed program amendment and the suspension of processing of the amendment by OSM.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 18, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–12890 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Remining

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on Revised Program Amendment No. 37 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has proposed further revisions to one rule which are intended to respond to OSM questions about the proposed amendment and to make the rule as effective as the corresponding Federal regulations. Proposed Revised Program Amendment No. 37 concerns the authorization to conduct coal mining on previously mined areas.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on July 5, 1990. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on July 2, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 20, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232. *Telephone:* (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224. *Telephone:* (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated January 20, 1989 (Administrative Record No. OH–1131), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment No. 37 to the Ohio program. Ohio initiated the proposed amendments to take advantage of the increased flexibility afforded to the Ohio Environmental Protection Agency (OEPA) under the amended Clean Water Act. Ohio's proposed amendments were intended to create incentives for mine operators to enter, mine, and reclaim areas that were previously affected by mining and which, as a result of that mining, have continuing water pollution.

On February 7, 1989, OSM published a notice in the **Federal Register** (54 FR 5940) announcing receipt of proposed Program Amendment No. 37 and inviting public comment on its adequacy. The public comment period ended on March 9, 1989. The public hearing scheduled for March 6, 1989 was not held because no one requested an opportunity to testify.

By letter dated July 26, 1989 (Administrative Record No. OH–1203), OSM requested additional information from Ohio concerning several aspects of the proposed amendment.

By letter dated August 16, 1989 (Administrative Record No. OH–1201) Ohio submitted responses to OSM's questions about proposed Program Amendment No. 37. With its responses, Ohio submitted Revised Program Amendment No. 37 incorporating changes resulting from OSM's questions and from revisions to chapter 1513 of the Ohio Revised Code (ORC) enacted through House Bill No. 399 of the Ohio General Assembly.

On September 12, 1989, OSM published a notice in the **Federal Register** (54 FR 37692) announcing receipt of proposed Revised Program Amendment No. 37 and inviting public comment on its adequacy. The public comment period ended on October 22, 1989. The public hearing scheduled for October 10, 1989 was not held because no one requested an opportunity to testify.

By letter dated March 27, 1990 (Administrative Record No. OH–1294), OSM requested additional information from Ohio concerning several aspects of proposed Revised Program Amendment No. 37.

By letter dated May 8, 1990 (Administrative Record No. OH–1307) Ohio submitted further proposed revisions to Ohio Administrative Code (OAC) section 1501:13–4–15 which are intended to respond to OSM's questions about proposed Revised Program Amendment No. 37 and to make the proposed rule as effective as the

corresponding Federal regulations. Ohio's specific proposed changes to OAC section 1501:13–4–15 are briefly discussed below.

(1) *OAC section 1501:13–4–15 paragraph (G)(3):* Ohio is rewriting this paragraph to delete the provision that an operator is exempt from the obligation to treat pre-existing discharge if the reason for exceeding the effluent limitations is a cause other than the operator's mining and abatement activities.

(2) *OAC section 1501:13–4–15 paragraph (G)(5)(a):* Ohio is rewriting this paragraph to specify that untreated pre-existing discharge must not exceed effluent limitations established in the remining NPDES permit in order for the Chief of the Ohio Department of Natural Resources, Division of Reclamation to authorize the discontinuance of the operator's treatment of the pre-existing drainage.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on June 20, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–12891 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM announcing the receipt of a proposed continuation of Revised Program Amendment Number 29 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This continuation of the amendment is intended to satisfy a requirement placed on the Ohio program as part of OSM's approval of Ohio Revised Program Amendment Number 29. Ohio is proposing to amend its program to clarify that the State will not universally consider the repair of rills and gullies to be nonaugmentative and that Ohio will base its determination of whether rill and gully repair is augmentative on the extent of repairs needed and the cause of the erosion.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on before 4 p.m. on July 5, 1990. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on June 20, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 20, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

On January 31, 1990, OSM approved, with certain exceptions, Ohio Revised Program Amendment Number 29 (55 FR 3222). As part of that approval, OSM required Ohio to further amend its program to clarify that the repair of rills

and gullies will not be universally considered nonaugmentative and that the determination of whether rill and gully repair is augmentative shall be based on the extent of repairs needed and the cause of the erosion.

By letter dated May 11, 1990 (Administrative Record No. OH–1308), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted a proposed continuation of Ohio Revised Program Amendment Number 29. This proposed continuation of the amendment would revise Ohio Administrative Code (OAC) section 1501:13–9–15 paragraph (I)(2)(c)(ii) to reiterate the clarifying language required by OSM. Ohio will not universally consider the repair of rills and gullies to be nonaugmentative. Ohio's determinations of whether specific cases of rill and gully repair are augmentative shall be based on the extent of repairs needed and the cause of the erosion.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on June 20, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–12892 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 44 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to make the Ohio program as effective as the corresponding Federal regulations governing the definition of "abandoned site," the establishment of reduced inspection frequency at abandoned sites, and the citation of violations at abandoned sites.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on July 5, 1990. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on July 2, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 2, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated May 11, 1990 (Administrative Record No. OH–1309), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted Ohio Program Amendment Number 44. This amendment would revise two rules at Ohio Administrative Code (OAC) Sections 1501:13–14–01 and 02 to make

these rules as effective as the corresponding Federal regulations concerning abandoned sites. Nonsubstantive changes are proposed throughout the two Ohio rules to correct paragraph letter notations. The substantive changes proposed by Ohio in these two rules are discussed briefly below:

1. OAC section 1501:13–14–01 paragraph (A)(4)(a): Ohio is adding this paragraph to define an "abandoned site."

2. OAC section 1501:13–14–01 paragraph (A)(4)(b): Ohio is adding this paragraph to specify the written findings which the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) must make in order for a site to be deemed abandoned.

3. OAC section 1501:13–14–01 paragraph (E): Ohio is adding this paragraph to specify that the Chief shall inspect each abandoned site as necessary to monitor for changes of environmental conditions or operational status at the site. The Chief shall document the alternative inspection frequency for each abandoned site and the reasons for selecting that frequency before ceasing to perform inspections at the site as required by OAC Section 1501:13–14–01(C) and (D).

4. OAC section 1501:13–14–02 paragraph (C): Ohio is adding this paragraph to specify that the Chief may refrain from issuing a notice of violation or cessation order for a violation at an abandoned site if the abatement of the violation is required under any previously issued notice or order.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR MORE INFORMATION CONTACT**" by 4 p.m. on June 20, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–12893 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AE33

Burial Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations on burial benefits. This proposed change is based on VA General Counsel opinions holding that the 2-year time limit for filing claims does not apply to claims for service-connected burial allowance, reimbursement for the cost of transporting a veteran's remains to the place of burial, or monetary allowance in lieu of a Government-furnished headstone or grave marker. The intended effect of the change is to remove existing time limits for filing claims for those benefits.

DATES: Comments must be received on or before July 5, 1990. This change is proposed to be effective 30 days after the date of publication of the final rule. Comments will be available for public inspection until July 16, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until July 16, 1990.

FOR FURTHER INFORMATION CONTACT: Don England, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a summary of a General Counsel Opinion dated May 1, 1989, (O.G.C. Prec. 9–89) in the **Federal Register** of September 14, 1989 (54 FR 38034). That opinion held that the 2-year time limit for filing claims established in 38 CFR 3.1601(a) should not apply to claims for service-connected burial benefits under 38 U.S.C. 907. A subsequent unpublished General Counsel Opinion dated July 31, 1989, (O.G.C. Conclusive 7–89) held that this 2-year time limit as applied to claims for reimbursement for the cost of transporting a veteran's body to a national cemetery under 38 U.S.C. 908 and the 2-year time limit established in 38 CFR 3.1612(g) as applied to claims for monetary allowance in lieu of a Government-furnished headstone or grave marker under 38 U.S.C 906(d) are invaid.

Based on these opinions, VA is proposing to amend 38 CFR 3.1601(a) to eliminate the time limit for filing claims for all burial-related claims except for those authorized under the provisions of 38 U.S.C. 902 when death is not service-connected. We also proposed to amend 38 CFR 3.1612(g) to eliminate the time

limit for filing claim for monetary allownce in lieu of a Government-furnished headstone or marker.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of smal entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly afected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of United States-based enteprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.101.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 7, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR part 3, Adjudication, is proposed to be amended as follows:

§ 3.1601 [Amended]

1. Section 3.1601 is proposed to be amended by revising paragraph (a) to read as follows:

(a) Claims. Claims for reimbursement or direct payment of burial and funeral expenses under § 3.1600(b) and plot or interment allowance under § 3.1600(f) must be received by VA within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of his (or her) discharge from service, but after his (or her) death the discharge has been corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from date of correction of the discharge. This time limit does not apply to claims for service-connected burial allowance under § 3.1600(a) or for the cost of transporting a veteran's body to the place of burial under § 3.1600(c) or § 3.1600(g).

* * * * *

§ 3.1612 [Amended]

2. Section 3.1612 is proposed to be amended by revising paragraph (g) to read as follows:

* * * * *

(g) *Claims.* There is no time limit for filing claims for monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

[FR Doc. 90–12940 Filed 6–4–90; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–054; FRL–3784–5]

Approval and Promulgation of Implementation Plans, Kentucky; Jefferson County Air Pollution Control District Regulation 7.17

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to disapprove a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky for the Jefferson County Air Pollution Control District (District). The SIP revision would revise amended District Regulation 7.17, Standard of Performance for New Automobile and Light Duty Truck Surface Coating Operations, by replacing the amended regulation with the federal New Source Performance Standard (NSPS) regulation 40 CFR part 60, subpart MM. The proposed revision is not consistent with current Agency policy. The public is invited to submit written comments on this proposed action.

DATES: To be considered, comments must reach us on or before July 5, 1990.

ADDRESSES: Written comments should be addressed to Kay T. Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30345

Commonwealth of Kentucky, Natural Resources and Environmental Protection Agency, Division of Air Pollution Control, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40204

Jefferson County Air Pollution Control District, 914 East Broadway, Louisville, Kentucky, 40204.

FOR FURTHER INFORMATION CONTACT: Kay T. Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Jefferson County Air Pollution Control District Regulation 7.17 was originally approved by EPA as part of the Part D ozone SIP on January 25, 1980 (45 FR 6092). This regulation governs new surface coating operations for automobiles and light-duty trucks located in Jefferson County, Kentucky. On January 15, 1986, the District held a public hearing on an amendment to Regulation 7.17, which parallels 40 CFR Part 60, Subpart MM, the federal NSPS for automobile and light-duty truck surface coating operations. The amendment was adopted and became effective in the District on February 19, 1986; however, it was never submitted to EPA for approval. Therefore, the original form of District Regulation 7.17 is the federally approved regulation and any amendment to the SIP would have to be applied to that regulation.

On March 1, 1988, the Commonwealth of Kentucky, through the Natural Resources and Environmental Protection Cabinet, officially submitted a SIP revision for the District. The SIP revision would replace the amended version of District Regulation 7.17 by adopting by reference 40 CFR part 60, subpart MM. The Commonwealth and/or the District were advised on March 28, 1988, July 25, 1988, and August 5, 1988, that the federal NSPS regulation for new automobile and light-duty truck surface coating operations is less stringent than the federally approved version of District Regulation 7.17. Therefore, its repeal and replacement by 40 CFR part 60, subpart MM would constitute a SIP relaxation. In the March 28, 1988, and August 5, 1988, letters, the Commonwealth was notified that because Jefferson County is a primary nonattainment area for ozone, such a SIP relaxation could not be approved without a new attainment demonstration. However, the District neither revised nor withdrew the proposed SIP revision. Therefore, the proposed SIP revision has been

determined to be inconsistent with current agency policy.

The submitted revision is not approvable because 40 CFR part 60, subpart MM is less stringent than Regulation 7.17 for two primary reasons. First of all, subpart MM allows compliance with the prescribed emission limit to be based on a monthly weighted average. District Regulation 7.17 does not address any time period over which VOC emissions may be averaged. It is the position of EPA that when a SIP is silent with respect to averaging time, continuous compliance is implied. Although it is the position of the District that an annual average was intended for demonstrating compliance, such an averaging time would not have been approvable even at the time of original submittal. Therefore, subpart MM is less stringent than District Regulation 7.17 because a monthly weighted average is allowed when demonstrating compliance with subpart MM.

Secondly, subpart MM is less stringent than District Regulation 7.17 with respect to the allowable emissions on a solids-applied basis. The allowable emission rate for topcoats in subpart MM is 12.3 lbs of volatile organic compounds (VOC) per gallon of solids applied. The primary method of compliance with District Regulation 7.17 is an 85 percent reduction by weight of the VOC entering the affected facility. Exemptions from this standard are provided. The exemption for topcoat coating lines is 2.8 pounds of VOC per gallon of coating as applied, excluding water, or 50% solids by volume for VOC-reduced coating applied with a minimum of 65% transfer efficiency. This transfer efficiency-based alternative specified in District Regulation 7.17 yields a limit of 11.3 lbs VOC per gallon of solids applied (see Technical Support Document (TSD) for calculations).

Ford has maintained that a transfer efficiency of 30% should be associated with the emission limit of 2.8 lb VOC/gal less water yielding a limit on a solids applied basis of 15.1 lbs VOC/gal of solids applied (see TSD). Since District Regulation 7.17 specifically refers to 65% transfer efficiency and coatings that contain 50% solids as an alternative to 2.8 lbs VOC per gallon of coatingless-water, an equivalence based on 30% transfer efficiency, yielding a limit of 15.1 lbs VOC per gallon of solids applied, cannot be assumed.

As an aside, District Regulation 7.17, which applies to new sources, has a more restrictive transfer efficiency based alternative than District Regulation 6.17, the RACT rule for existing sources. The allowable limit on a solids-applied basis using the transfer efficiency-based alternative in District Regulation 6.17 is 14.7 lbs VOC per gallon of solids applied (see TSD). Hence, District Regulation 7.17 is more stringent than the corresponding RACT regulation.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Proposed Action

The request to amend District Regulation 7.17 is not consistent with current Agency policy. Therefore, EPA is today proposing to disapprove this revision to the Kentucky ozone SIP for Jefferson County.

The public is invited to participate in this rulemaking procedure by submitting written comments on this proposed action.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities since the revision would affect only one source, Ford's Louisville plant. (See 46 FR 8709.)

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: January 23, 1989.

Lee A. DeHihns, III,

Regional Administrator.

[FR Doc. 90–12979 Filed 6–4–90; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 55, No. 108
Tuesday, June 5, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 90-079]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Potato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company to allow the field testing in Benton County, Washington, of potato plants genetically engineered to express the viral coat proteins from potato virus X, potato virus Y, potato leaf roll virus, and/or a delta-endotoxin protein from *Bacillus thuringiensis* var. *tenebrionis* that is toxic to the larvae of select coleopteran insects. The assessment provides a basis for the conclusion that the field testing of these genetically engineered potato plants will not present a risk of introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Glayton Givens at this same address. The environmental assessment should be requested under permit number 90-032-01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test potato plants genetically engineered to express the viral coat proteins from potato virus X, potato virus Y, potato leaf roll virus, and/or a delta-endotoxin protein from *Bacillus thuringiensis* var. *tenebrionis* that is toxic to the larvae of select coleopteran insects, The field trial will take place in Benton County, Washington.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the potato plants under the conditions described in the Monsanto Agricultural Company application, APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS, finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genes encoding the viral coat proteins of potato virus X, potato virus Y, potato leaf roll virus, and/or the insecticidal crystal protein from *Bacillus thuringiensis* have been inserted into the potato chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the potato plants are sterile.

2. Neither the recombinant genes themselves, nor their gene products, confer on potato any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The expression of the recombinant genes does not provide the transformed potato plants with any measurable selective advantage over nontransformed potato in their ability to be disseminated or to become established in the environment.

4. The vector used to transfer the recombinant genes to the potato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to any susceptible plant.

5. The vector agent, the bacterium that was used to deliver the vector DNA and the recombinant genes into the plant cell, has been shown to be eliminated and no longer associated with the transformed potato plants.

6. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the genes to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

7. Select noncoding regulatory regions derived from plant pests have been incorporated into the plant chromosome but do not confer on potato any plant pest characteristics.

8. The microorganism from which the insecticidal protein was isolated is not a plant pest and is widely distributed in the environment as a soil inhabitant. Upon ingestion, the insecticidal protein kills only coleopteran insects. It is not toxic to other insects, wild or domestic birds, fish or mammals. Because of its safety, its topical application on vegetable crops is permitted up to harvest date.

9. The field test site is small (less than one acre) and physically isolated by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.c. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 30th day of May 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–12968 Filed 6–4–90; 8:45 am]

BILLING CODE 3410–34–M

[Docket 90–078]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Soybean Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company to allow the field testing in Crittenden County, Arkansas, Jersey County, Illinois, and Queen Annes County, Maryland, of soybean plants genetically engineered to express a 5-enolpyruvylshikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered soybean plants will not present a risk of introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ellen Liberman, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 846, Federal Building, 6505 Bélcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90–038–05.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, of St Louis, Missouri, has submitted an application for a permit for release into the environment, to field test soybean plants genetically engineered to express a 5-enolpyruvylshikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate. The field trials will take place in Crittenden County, Arkansas, Jersey County, Illinois, and Queen Annes County, Maryland.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the soybean plants under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS's review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvylshikimate-3-phosphate synthase that confers resistance to the herbicide glyphosate has been inserted into the soybean chromosome. In nature, soybean chromosomal genes can only be transferred to other sexually compatible plants by cross-pollination. In these field trials, the introduced gene cannot spread to other plants by cross-pollination because soybean is a predominantly self-pollinating plant and the field test plots are a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

2. Neither the 5-enolpyruvylshikimate-3-phosphate synthase gene itself, nor its gene product, confers on soybean any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The plant from which the 5-enolpyruvylshikimate-3-phosphate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvylshikimate-3-phosphate synthase gene does not provide the transformed soybean plants with any apparent selective advantage over nontransformed soybean in the ability to be disseminated or to become established in the environment.

5. The vectors used to transfer the 5-enolpyruvylshikimate-3-phosphate synthase gene to soybean plants have been evaluated for their use in this specific experiment and do not pose a plant pest risk. Although two of the vectors contain DNA sequences that were derived from DNA sequences with known plant pest potential, the vectors have been disarmed by the removal of the genes that are necessary for producing plant disease.

6. The vector agent, a bacterium that was used to deliver the vector DNA and the 5-enolpyruvylshikimate-3-phosphate synthase gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed soybean plants.

7. Horizontal movement of the introduced gene has not been demonstrated. The foreign DNA is stably integrated into the plant genome.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The individual field test sites are small (the total number of transgenic plants and area covered at each site are: Maryland, 80,000 plants occupying 0.8 acres, Arkansas, 230,000 plants occupying 2 acres, and Illinois, 40,000 plants occupying 0.5 acre) and are located on private research farms which are isolated from any population center.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, D.C., this 30th day of May 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–12969 Filed 6–4–90; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Revised Allotment Management Plan for the Upper Ruby Cattle & Horse Allotment, Beaverhead National Forest, Sheridan Ranger District, Madison County, MI

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of a proposed Allotment Management Plan (AMP) for the Upper Ruby Cattle & Horse Allotment. The AMP will guide management within the Upper Ruby C&H Allotment for the next ten year period. This EIS will tier to the Beaverhead National Forest Land and Resource Management Plan EIS of April 1986, which provides overall guidance in achieving the desired future condition for the area. The purpose of the proposed action is to develop an allotment management plan for incorporation in permits for domestic livestock grazing in the Upper Ruby in compliance with 43 U.S.C. 1752(d).

The Forest Service is seeking additional information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in and/or affected by the proposed action. This input will be used in preparing the Draft Environmental Impact Statement (DEIS). This process will include:

1. Identification of issues to be analyzed in depth;
2. Identification of additional reasonable alternatives;
3. Identification of potential environmental effects of the alternatives;
4. Mitigation and monitoring necessary to implement any of the alternatives.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed.

DATE: Comments concerning the scope of the analysis should be received in writing by July 10, 1990 to receive timely consideration in preparation of the Draft EIS.

ADDRESS: Submit written comments to District Ranger, Sheridan Ranger District, box 428, Sheridan, MT 59749.

FOR FURTHER INFORMATION CONTACT: Ron Stellingwerf, District Ranger, or George Weldon, Assistant Ranger, Beaverhead National Forest, Sheridan National Forest, (406)–842–5432.

SUPPLEMENTARY INFORMATION: This is site specific National Environmental Policy Act (NEPA) compliance for an Allotment Management Plan (AMP) on the Upper Ruby Cattle & Horse Allotment on the Sheridan Ranger District of the Beaverhead National Forest. A revised AMP is necessary to implement and incorporate the goals and objectives and standards and guidelines of the 1986 Beaverhead National Forest Land and Resource Management Plan. Some alternatives may require boundary adjustments and revised Allotment Management Plans to adjacent livestock allotments. Appendix Q of the 1986 Plan calls for all livestock grazing allotments on the Forest to be managed under an improved system within five years following land management plan implementation. Forest-wide Goal #6 is to "[p]rovide opportunities for use of forage by domestic livestock at or above current permitted levels of use while protecting or enhancing fishery habitat, riparian areas, recreation and other forest resources". Specific management direction is contained in management area prescriptions. The primary management areas of concern in the Upper Ruby Allotment are:

Management Area 11—Manage riparian areas for the benefit of riparian dependent resources, including such resources as wildlife, recreation, forage, fishery and aquatic habitat, and water quality.

Maintain livestock grazing opportunities within the standards designed to protect the riparian dependent resource values.

Management Area 24—Protect and enhance wildlife habitat condition while maintaining or improving range vegetative condition and livestock forage productivity through management and cultural practices. Meet Forest-wide standards that ensure protection of other resource values including water quality, fisheries, and wildlife habitat.

An allotment management plan, as defined in 36 CFR 222.1(b)(2), "[p]rescribes the manner in and extent to which livestock operations will be conducted in order to meet the multiple-use, sustained yield, economic, and other needs and objectives as determined for the lands, involved; and (ii) [d]escribes the type, location, ownership, and general specifications for the range improvements in place or to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and (iii) [c]ontains such other provisions relating to livestock grazing and other objectives as may be prescribed by the Chief, Forest Service, consistent with applicable law". The AMP is attached to and made a part of the term grazing permit under part 2, 6(a) which provides "[t]he allotment management plan is a part of this permit and the permittee will carry out its provisions and/or other instructions issued by the Forest officer in charge for the area under permit, and will require his employees, agents, and

contractors and subcontractors to do likewise".

Several preliminary issues have been identified on the approximately 66,000 acres to be analyzed. These include the effects on: Fish and wildlife, water quality, recreation, riparian ecosystems, soils, vegetation, adjacent allotments, and the social/economic situation in the area. The analysis will consider a range of alternatives. One of these will be the "no action" alternative in which the proposed action would not be implemented.

The Sheridan District Ranger will hold public workshops at the Episcopal Hall at 7 p.m.. on Poppleton Street in Sheridan, MT on Wednesday, June 20, 1990, and at the War Bonnet Inn, room number War Council #5 in Butte, MT on Thursday June 21, 1990 at 7 p.m.

The purpose of these meetings is to determine the significant issues, related to this proposed action, early in the analysis process.

The EIS will analyze and document the direct, indirect and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest Lands will be considered. In addition, the EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by December 1, 1990. At that time, the EPA will publish a Notice of Availability of the DEIS in the Federal Register. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by April 15, 1991. The Forest Service will respond in the FEIS to the comments received on the DEIS.

The Sheridan District Ranger, Ron Stellingwerf, who is the responsible official for the EIS, will make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the FEIS and applicable laws, regulations and policies.

The decision and reasons for the decision will be documented in a Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: May 29, 1990.

Gerald W. Alcock,

Acting Forest Supervisor, Beaverhead National Forest.

[FR Doc. 90-12990 Filed 6-4-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 5-90]

Foreign-Trade Zone 24—Wilkes Barre/Scranton, PA; Withdrawal of Request for Subzone Status for Hershey Candy Plant

Notice is hereby given of the withdrawal of the application submitted by the Eastern Distribution Center, Inc., International Trade Center of Pennsylvania, grantee of FTZ 24, requesting authority for subzone status for Hershey Foods Corporation. The application was filed on February 12, 1990 (55 FR 6027, 2/21/90).

The withdrawal is requested by the applicant because of changed circumstances.

The case has been withdrawn without prejudice, and FTZ Board Docket 5-90 is closed.

Dated: May 29, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-12907 Filed 6-4-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-351-603]

Brass Sheet and Strip From Brazil; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On February 28, 1990, the Department of Commerce initiated an administrative review of the antidumping duty order on brass sheet and strip from Brazil. The Department has now determined to terminate this review.

EFFECTIVE DATE: June 5, 1990.

FOR FURTHER INFORMATION CONTACT: Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3910 or (202) 377-0159.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1990, in response to a request received from a respondent in this case, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on brass sheet and strip from Brazil (55 FR 7015). This notice stated that we would review entries from Eluma Corporation during the period January 1, 1989 through December 31, 1989.

The respondent subsequently withdrew its request for review on May 16, 1990. Accordingly, the Department has determined to terminate the review.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(a)(5) (1989).

Dated: May 24, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-12902 Filed 6-4-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-002]

Chloropicrin From the People's Republic of China; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on chloropicrin from the People's Republic of China.

EFFECTIVE DATE: June 5, 1990.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION: On March 1, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 7356) its intent to revoke the antidumping duty order on chloropicrin from the People's Republic of China (49 FR 10691; March 22, 1984). The Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties. We had not received a request for an administrative review of the order for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)).

On April 2, 1990, Niklor Chemical Co., Wright Corporation, Trinity Manufacturing, Inc., Hanlin Group, Inc., and LinChem, Inc., U.S. producers of chloropicrin, objected to our intent to revoke the order. Therefore, we no longer intend to revoke the order.

Dated: May 18, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-12905 Filed 6-4-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-047]

Elemental Sulphur From Canada; Termination in Part of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of termination in part of antidumping duty administrative review.

SUMMARY: On February 16, 1990, the Department of Commerce initiated an administrative review of the antidumping finding on elemental sulphur from Canada. The Department has now determined to terminate in part this review.

EFFECTIVE DATE: June 5, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1990, the Department of Commerce published a notice of initiation of administrative review of the antidumping finding an elemental sulphur from Canada. This notice stated that we would review entries from four exporters during the period December 1, 1988 through November 30, 1989.

BP Resources Canada, Ltd. subsequently withdrew its request for review on March 22, 1990. Accordingly, the Department has determined to terminate in part the administrative review for BP Resources.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and § 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: May 18, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-12904 Filed 6-4-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-502]

Iron Construction Castings From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review

SUMMARY: In response to request by the petitioners and one respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on iron construction castings from the People's Republic of China. The review covers various exporters and producers for the period May 1, 1987 through April 30, 1988 and May 1, 1988 through April 30, 1989. The review indicates the existence of dumping margins in both periods.

As a result of review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATES: June 5, 1990.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Laurie Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 1986, the Department of Commerce (the Department) published an antidumping duty order on iron construction castings from the People's Republic of China (PRC) in the **Federal Register** (51 FR 17222). In May 1988, petitioners and one respondent, Minmet Beijing, requested that we conduct an administrative review of the subject merchandise for the May 1, 1987 through April 30, 1988 period. We published the notice of initiation on June 29, 1988 (53 FR 24471). In May 1989, petitioners requested that we conduct an administrative review of the subject merchandise for the May 1, 1988 through April 30, 1989 period. We published the notice of initiation on June 21, 1989 (54 FR 26069). The Department has now conducted those administrative reviews in accordance with section 751 of the Tariff Act of 1990 (the Tariff Act).

Scope of the Review

The United States has developed a system of tariff classification based on the international system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of iron construction castings. Until January 1, 1989, iron construction castings were classified under item 657.0950 and 657.0990 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classified under HTS items 7325.10.00.00 and 7325.10.00.50. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The notice of initiation for the May 1, 1987 to April 30, 1988 period covered 15 producers or exporters of the subject merchandise, many of which we were unable to identify or locate. Therefore, we sent questionnaires to 29 firms listed in the PRC or Hong Kong telephone directories which could reasonably be expected to match the company name supplied by petitioners. Four firms reported that they were not associated with the iron-construction-castings industry: China National Cereals, Oils and Foodstuffs Import/Export Corporation, China Merchants Industries Ltd., Far East Enterpriseing (HK) and China Resources Transportation & Godown Co., Ltd. Two exporters, Minment Beijing and Guangdong Minmetals, responded to the Department's questionnaire, naming their suppliers. Guangdong Minmetals was not directly named by the petitioners as a producer or exporter of the subject merchandise, and hence, did not receive a questionnaire. However, as a branch of the China National Metals and Minerals Import and Export Corporation, the Department considers its response to be covered by the questionnaire sent to the headquarters address of that corporation.

In the course of the 1987–1988 review, both Minmet Beijing and Guangdong Minmetals claimed that they had changed in status from a branch of the China National Metals and Minerals Import and Export Corporation to a separate corporate entity since the original antidumping investigation. This claim was reiterated during the 1988–1989 review. Therefore, we sent questionnaries to each separately named branch and the headquarters of every import/export corporation of which we were aware. We analyzed the responses and calculated separate margins for each response that we received. We used the best information otherwise available to determine the rates for the nonresponding firms.

The notice of initiation for the May 1, 1988 through April 30, 1989 period covered eight producers or exporters of the subject merchandise, all of which were identified and located. We received responses from Minmet Beijing and Guangdong Minmetals. These companies also named as their suppliers five foundries, two of which were also named as producers in the 1987–1988 review.

Therefore, this notice of preliminary results covers various exporters and manufacturers during the period May 1, 1987 through April 30, 1988, and the period May 1, 1988 through April 30, 1989. We are calculating separate margins for each branch of each import/export corporation and its suppliers for the purposes of these reviews.

United States Price

The Department used purchase price, as defined in section 772 of the Tariff Act, to calculate United States price for each period of review. Purchase price was based on the delivered, packed price to unrelated purchasers in the United States. We made adjustments for foreign inland freight and ocean freight. We imputed brokerage and handling charges since respondents reported paying them in addition to ocean freight. No other adjustments were claimed or allowed.

Foreign Market Value

The PRC is a state-controlled economy for purposes to these administrative reviews. We initiated the 1987–1988 review prior to the effective date of the Omnibus Trade and Competitiveness Act of 1988 (1988 Act), and, therefore, used the hierarchy of preferences for determination of foreign market value (FMU) contained in section 773(c) of the Tariff Act for that review. In accordance with the Tariff Act prior to the 1988 amendments, § 353.8(c) of the Commerce regulations (1988) establishes a preference for determining FMV based upon sales prices or costs in a non-state-controlled-economy country at a stage of economic development comparable to that of the state-controlled-economy country.

For the 1987–1988 review, we attempted to identify producers or exporters of iron construction castings in India, Indonesia, Pakistan, the Philippines, Sri Lanka, Bolivia, Jamaica, Morocco, Zambia, and Zimbabwe, countries which were determined to be comparable to the PRC in stage of economic development. We were able to identify and contact iron-construction casting producers in the Philippines, Morocco, Bolivia, and Jamaica. We requested both sales and cost information concerning the merchandise covered by the 1987–1988 review. However, none of the firms responded. We were also unsuccessful in identifying producers or exporters of iron construction castings in any of the other countries.

Therefore, in accordance with section 353.8(c) of the Commerce regulations (1988), we calculated FMV based on the Chinese factors of production as valued in a non-state-controlled-economy country at a stage of economic development comparable to that of the PRC. Since we were unable to obtain sufficient company-specific information from producers of the subject merchandise, we valued the Chinese factors of production using publicly available statistical sources. The Philippines is the only country at a comparable level of development to the PRC for which we could locate information to satisfy the requirements of our analyses.

We valued the direct and indirect material inputs reported by the Chinese producers of iron construction castings by the weighted-average FOB import price reported in the 1987 Foreign Trade Statistics of the Philippines. We excluded imports from nonmarket economies from this average. We increased material costs to include the cost of transportation from the mine to the factory using the quantity of materials consumed and distance from the nine as reported by respondent. We used petitioners' estimate of the freight rates available to the producers in the United States as the best information otherwise available since published rates in the Philippines were unavailable.

We valued direct factory wages and indirect labor at the 1987 average wage rate for non-agricultural activities provided in the 1988 Yearbook of Labour Statistics of the International Labour Organization of the United Nations. Since the wage rates reported by the International Labour Organization do not include fringe benefits such as health, retirement and "social-security," we increased the total labor cost by a factor supplied by respondent as the best information otherwise available. This factor represents the average fringe benefits ratio for Indian labor for the iron and steel industries which the Department used in its final determination of sales at less than fair value in its investigation of tapered roller bearings from the People's Republic of China.

We used petitioners' estimate of depreciation expense in the U.S. castings industry as a percentage of cost of manufacturing to value depreciation since industry-specific information on depreciation expense in the Philippines is not available. We valued electricity at

the price per kilowatt hour reported by sources in the World Bank to be currently available to commercial and industrial users in the Philippines as the best information otherwise available. We used petitioners' estimate of water charges for the U.S. industry as the best information otherwise available since published rates in the Philippines were unavailable.

For general, selling and administrative expenses, we used the statutory minimum of 10 percent of the sum of material and fabrication. We used the statutory minimum of eight percent for profit.

We adjusted constructed value for credit and packing on sales to the United States. We imputed credit for the reported amount of time between the date of payment and the date of shipment. We increased this number to account for the reported number of days between production and shipment. We used, as the best information otherwise available, petitioners' estimate of the average commercial prime lending rate that existed in the United States during the 1987–1988 review period since appropriate rates from the Philippines are not available.

We were unable to value packing materials and labor using the methods described above for raw materials and factory labor. Therefore, we valued packing using petitioners' estimate of packing costs as a percentage of the cost of manufacturing derived from the public submissions in the 1986–1987 administrative review of iron construction castings from Brazil.

For the 1988–1989 review, we used the hierarchy of preferences contained in the 1988 Act, determining FMV by using the factors of production according to section 773(c)(3) of the Tariff Act.

We valued material factor inputs reported by the Chinese by the weighted-average FOB price reported in the 1988 Foreign Trade Statistics of the Philippines. We increased material costs to include the cost of overland transportation from the mine to the factory using the quantity of materials consumed and distance from the mine as reported by respondent. We used the estimate of freight rates for the U.S. industry provided by petitioners in the 1988–1989 period as the best information otherwise available to value transportation costs since updated published information is unavailable.

We valued direct and indirect labor, depreciation, electricity, water, general, selling, and administrative expenses, and profit as in the 1987–1988 period.

We adjusted constructed value to account for credit and packing on sales to the United States. We imputed credit expenses based on respondents' estimate of the number of days between the date of shipment and the date of payment during the 1988–1989 review. We increased this number by the reported number of days between production and shipment. We used petitioners' estimate of the average commercial prime lending rate that existed in the United States during the 1987–1988 review period to value credit expense for the 1988–1989 review period.

We valued U.S. packing using respondents' estimate of packing expenses, taken from the public submission in the 1988–1989 administrative review of iron construction castings from India.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period May 1, 1987 through April 30, 1988:

Exporter/third-country reseller	*Margin (percent)*
Minmet Beijing	47.54
Minmetals Guangdong	40.93
Chemical	47.54
China Light*	47.54
China Merchants*	11.66
China National Arts & Crafts*	47.54
China National Cereals*	11.66
China National Machinery & Equipment (CMEC)*	47.54
China National Machinery*	47.54
China National Metals and Minerals*	47.54
China Resources	47.54
Evergain	11.66
Far East	47.54
Sinotrans Anhui (initiated as Sinotrans Anhai)	11.66
Wheat Lan	47.54
Wuhan Shipbuilding	47.54

* Rates for named import/export corporations apply to all unnamed branches of those corporations.

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period May 1, 1988 to April 30, 1989:

Exporter/third-country reseller	*Margin (percent)*
China National Metals and Minerals Import and Export Corporation*, including:	
Beijing Branch (Minmet Beijing)	97.57
Guangdong Branch (Minerals Guangdong)	65.31
Liaoning (Dalian) Branch	97.57
Jilin Branch	97.57
Anhui Branch	97.57
China National Machinery & Equipment Import and Export Corporation (CMEC)*	97.57
China National Light Industrial Products Import and Export Corporation*	97.57

* Rates for named import/export corporations apply to all unnamed branches of those corporations.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required. For any future entries of this merchandise from a new exporter, whose first shipments occurred after April 30, 1988, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 47.54 percent shall be required. For any future entries of this merchandise from a new exporter, whose first shipments occurred after April 30, 1989, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 97.57 percent shall be required. These deposit requirements are effective for all shipments of Chinese iron construction castings entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1989).

Dated: May 24, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-12903 Filed 6-4-90; 8:45 am]

BILLING CODE 3510-DS-M

Certain Welding Quality Steel Billets; Notice of Short-Supply Review and Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; certain welding quality steel billets.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 17,000 metric tons of certain welding quality steel billets for June–September 1990 under Article 8 of the Arrangement Between the Government of Finland and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Finland Arrangement").

Short-Supply Review Number: 18.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Regulations, published in the **Federal Register** on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations"), the Secretary hereby announces that a short-supply determination is under review with respect to certain welding quality steel billets for use in the manufacture of wire rod used to make continuous welding wire. On May 25, 1990, the Secretary received an adequate petition from American Steel and Wire Corporation ("ASW") requesting a short-supply allowance for 17,000 metric tons of this product during June–September 1990 under Article 8 of the U.S.-Finland Arrangement.

The requested material meets the following specifications:

Dimensions (and tolerances): 130 mm square (±2 mm)×9.4–10.3 meters (no shorts);

Surface condition: free of cracks and mechanical defects, pinholes shall not exceed 2mm depth;

Corner radius: 6 mm±2mm;

Twist: 5 degrees max/length of billets;

Straightness: 13 mm max out-of-straight in any 1.5 meters, max 76 mm out-of-straight over full billet length, no hooked ends;

Squareness: rhomboid sections with uneven diagonals more than 8mm are unacceptable;

Ends: perpendicular to longitudinal axis, free of detachable saw burrs, fins, shear lips, tapered cuts are unacceptable, mushroomed ends must not exceed 6 mm/side, no open split ends;

Deoxidization practice and grain size: Silicon killed, coarse grain

Grades: 70S–3, 70S–3 (IMP), 70S–6, and ER 70S–7. All billets must be produced from direct cast steel, include controlled and specified product chemical analyses, and possess the following copper residual limits: Grades 70S–3, 70S–3 (IMP), and 70S–6: 0.07 max; Grade ER 70S–7: 0.100 max.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Regulations require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than June 22, 1990.

Comments: Interested parties wishing to comment upon this review must send written comments not later than June 12, 1990, to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after June 12, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–0159.

Dated: May 29, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-12906 Filed 6-4-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered and Threatened Species; Petition To List Sockeye Salmon in the Snake River, ID

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of petition and request for information.

SUMMARY: NMFS has received a petition to add the sockeye salmon (*Oncorhynchus nerka*) in the Snake River to the U.S. List of Endangered and Threatened Wildlife. In accordance with section 4 of the Endangered Species Act of 1973 (ESA), the Assistant Administrator for Fisheries has determined that the petition presents substantial scientific information indicating that the listing may be warranted. Prior to receiving this petition, the NMFS commenced its own review of the status of *O. nerka* in the Salmon River tributary to the Snake River, Idaho (April 9, 1900; 55 FR 13181). As required by section 4(b)(3) of the ESA, NMFS will continue its status review of *O. nerka* to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting information and data concerning the status of *O. nerka*.

DATES: Comments and information must be received by August 6, 1990.

ADDRESSES: Comments should be submitted to Einar Wold, Chief, Environmental and Technical Services Division, National Marine Fisheries Service, 1002 NE Holladay Street—room 620, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Merritt Tuttle, Environmental and Technical Services Division, NMFS, Portland, Oregon 97232. (503/230–5424 or FTS/429–5424) or Patricia Montanio, Protected Species Management Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/427–2322).

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add a species to, or remove a species from, the List of Endangered and Threatened Wildlife (List). Within 90 days after receiving a petition, section 4(b)(3) of the ESA requires the Secretary to determine whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. NMFS interprets "substantial information" to mean the amount of information that would lead a reasonable person to believe that the proposed measure may be warranted (50 CFR 424.14(b)).

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available after taking into account any efforts made by any State or foreign nation to protect the species.

Petition Received

On April 2, 1990, the Secretary of Commerce received a petition from the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho, to list the Snake River, Idaho, race of sockeye salmon (*O. nerka*) under the ESA. The Assistant Administrator for Fisheries has determined that the petition presents substantial scientific information indicating that the petitioned action may be warranted. Under section 4 of the ESA, this determination requires that a review of the status of *O. nerka* be conducted to determine if the petitioned listing is warranted. Prior to receiving the petition, NMFS initiated its own review of *O. nerka* in the Salmon River, a tributary to the Snake River. The Notice of Status Review was published in the **Federal Register** on April 9, 1990 (51 FR 13181). Therefore, NMFS will continue its original status review of *O. nerka* under the timeliness mandated by the ESA for petitions.

Section 4 of the ESA requires that within 12 months of receipt of a substantial petition, the Secretary make one of the following findings (1) The petitioned action is not warranted; (2) the petitioned action is warranted; or (3) the petitioned action is warranted, but pending listing proposals preclude immediate proposal of a regulation to implement the action. A Notice of Finding must be published in the **Federal Register** and, in the case of (2) above, a proposed regulation to implement the action must be included.

Section 4(a)(3) of the ESA requires that critical habitat be designated concurrently with a determination that a species is endangered or threatened. However, unlike designating a species as endangered or threatened, economic impacts must be considered when designating critical habitat. An area may be excluded from the designation if it is determined that the benefits of an exclusion outweigh the benefits of including the area as critical habitat, and the exclusion will not result in the extinction of the species.

Biological Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS is continuing its solicitation of information and comments concerning the status of *O. nerka* that was initiated in April 9, 1990, **Federal Register** notice of Status Review. There are several technical issues that will need to be addressed in reviewing the status of *O. nerka* in Snake River including: (1) Defining distinct population segments that qualify as species under the ESA; (2) determining the threshold for threatened and endangered status; (3) evaluating the role of artificial propagation; (4) evaluating the relationship with the nonanadromous kokanee salmon (*O. nerka*) populations; and (5) determining the causes of decline.

The NMFS reiterates that it seeks information from any interested party and requests that such data, information, and comments be accompanied by: (1) supporting documentation, such as maps, bibliographic reference, or reprints of pertinent publications; and (2) the Party's name, address, and any association, institution, or business that the Party represents.

Dated: May 29, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 90–12900 Filed 6–4–90; 8:45 am]

BILLING CODE 3510–12–M

Foreign Fishing Permits, Transshipment of "Donut Hole" Fish in the Exclusive Economic Zone

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice.

SUMMARY: NOAA advises the public of its decision to extend, for the remainder of 1990, fishing permits for certain foreign vessels operating in the Bering Sea and Aleutian Islands (BSA) and the Gulf of Alaska (GOA) fisheries within the Exclusive Economic Zone (EEZ). These permits authorize the vessels to transship fish production derived from fishing in waters of the Central Bering Sea seaward of the EEZ.

ADDRESSES: Inquiries should be directed to the Operations Support and Analysis Division, F/CMI, National Marine Fisheries Service (NMFS), 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, at the address above, or at 301–427–2337 or telex 467856 US COMM FISH CI.

SUPPLEMENTARY INFORMATION: Permit applications for fishing in the EEZ in 1990 were submitted by foreign fishing nations. Certain applications requested permits to allow the foreign vessels to transship in the EEZ fish production derived from catches in waters of the Central Bering Sea seaward of the EEZ, i.e., the "donut hole."

The permit applications were reviewed by the North Pacific Fishery Management Council (Council) under the provisions of section 204(b)(5) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The Council recommended that permits be issued only for those foreign vessels involved in joint ventures in the EEZ. The Council viewed its recommendation as an effective means to reduce the foreign vessels' fishing effort in the "donut hole", particularly on stocks believed to occur in both the "donut hole" and in the EEZ. NOAA considered

the Council's recommendation but decided to approve the applications for a 6-month period, pending further study of the effects of denying such permits on U.S. interests and determination of whether disapproval would be an effective means of significantly reducing the extent of foreign fishing in the "donut hole."

NOAA considered all available information bearing on this issue and completed its considerations on May 3, 1990. As a result, the Assistant Administrator for Fisheries has decided to extend permits authorizing transshipment of fish taken seaward of the EEZ from their current expiration date of June 30, 1990, through December 31, 1990. The Council was advised of this decision and concerned fishing nations have been notified that expiration dates were extended. This notice advises the public of the Assistant Administrator's decision.

The decision is restricted to permits issued for such transshipments this year in the BSA and GOA fisheries and any similar 1990 applications that may be received before the end of the year.

Dated: May 30, 1990.

William W. Fox, Jr.,

Assistant Administrator For Fisheries.

[FR Doc. 90-12991 Filed 06-04-90; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Open Meeting of Frequency Management Advisory Council

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of open meeting, Frequency Management Advisory Council.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 4:30 p.m. on June 22, 1990, in Room 1605 at the United States Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC. (Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda item for the meeting will be:

(1) Comprehensive Spectrum Management and Use Policy Review—NTIA Notice of Inquiry (NOI)

The meeting will be open to public observations. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before April 20, 1990. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to the Executive Secretary, FMAC, Mr. Michael W. Allen, National Telecommunications and Information Administration, Room 4099, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230, telephone 202-377-1138.

Dated: May 31, 1990.

Michael W. Allen,

Executive Secretary, Frequency Management Advisory Council, National Telecommunications and Information Administration.

[FR Doc. 90-12541 Filed 6-4-90; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF DEFENSE

Department of the Navy

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that a special subcommittee of the Board of Visitors to the United States Naval Academy will meet daily between 29 May and 15 July 1990, at the U.S. Naval Academy, Annapolis, Maryland. The sessions will be closed to the public.

The purpose of the meeting is to make inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, and academic method of the Naval Academy. These inquiries relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters as outlined in section 552b(c) (2), (5), (6), and (7) of title 5, United States Code.

Operational necessity constitutes an exceptional circumstance not allowing notice to be published in the Federal Register at least 15 days before the date of these meetings.

For further information concerning this meeting contact:

Captain John W. Renard, U.S. Navy, Retired, Secretary to the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, Maryland 21402-5017.

Dated: May 29, 1990.

Sandra M. Kay,

Alternate Federal Register Liaison Officer.

[FR Doc. 90-13116 Filed 6-1-90; 3:13 pm]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. FE C&E 90-12; Certification Notice—60]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to

section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d).

Further information is provided in the "**SUPPLEMENTARY INFORMATION**" section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Newark Bay Cogeneration Partnership, L.P., Ridgewood, NJ	5-22-90	Combined cycle	132.4	Newark, NJ.

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, phone number (202) 586-6769.

Issued in Washington, DC on May 30, 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-12981 Filed 6-4-90; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 et seq.) The listing does not include a collection of information contained in a new or revised regulation which is to be submitted under section 3504(h) of the Paperwork Reduction Act, nor a management and procurement assistance requirement collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by July 5, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-567.
3. 1902-0005.
4. FERC, Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity.
5. Extension.
6. Annually.
7. Mandatory.
8. Businesses or other for profit.
9. 101 respondents.
10. 138 responses.
11. 85.12 hours per response.
12. 11,747 hours (total).
13. The Commission uses the FERC-567 to: Process rate and certificate applications; analyze transportation costs; analyze depreciation of property costs; analyze probable impacts on market due to creation of new facilities; review production and transportation of natural gas activities; and establish means for enforcing curtailment rules.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, May 30, 1990.

Yvonne Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90-12980 Filed 6-4-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

URS Consultants, Inc.; Proposed Subcontract Award

SUMMARY: In accordance with the Department of Energy (DOE) Acquisition Regulations (DEAR), 48 CFR, chapter 9, subpart 909.570-9, the Federal Energy Regulatory Commission (FERC) gives public notice that a contract is being awarded, recognizing the existence of potential organizational conflicts of interest, or the potential appearance of organizational conflicts of interest, because it has been determined to be in the best interest of the United States.

FOR FURTHER INFORMATION CONTACT: James R. Higgins, Director, Procurement Operations Division, room 3112A, 941 North Capitol Street, NE., Washington,

DC 20428, Telephone Number (202) 208–1856.

Findings

1. The Federal Energy Regulatory Commission (FERC), Office of Hydropower Licensing, has a requirement to determine whether the pending Southern California Edison-San Diego Gas & Electric merger application is consistent with the public interest.

2. To assist in making this determination, FERC has directed its environmental contractor, Ebasco Environmental, to prepare an Environmental Assessment of SCE–SDG&E's merger application. Ebasco proposes to utilize URS Consultants, Inc. as a subcontractor, with URS preparing the bulk of the Environmental Assessment.

3. In accordance with 48 CFR 909.570–9, URS Consultants, Inc. provided statements disclosing relevant information concerning its interests related to other contractual situations and bearing on whether it has possible organizational conflicts of interest (1) With respect to being able to render impartial, technically sound and objective assistance or advice, or (2) which may give it an unfair competitive advantage.

4. Based on an evaluation of the information provided, it has been detemined that there could be potential conflicts of interest, or perceived conflicts of interest with regard to the work under this task. The clientele of URS Consultants, Inc., could potentially have conflicting requirements, as defined at 48 CFR 909.570–9(a), with regard to work required by the Office of Hydropower Licensing under this specific task. In particular, URS Consultants, Inc. could derive a portion of its annual income from arrangements with entities that either affect the work or could be affected by the work under this proposed contract.

5. Because no other subcontractor was found to have little or no likelihood of no organzational conflicts of interest, and based on the needs of the Commission and the fact that it is doubtful that a firm could perform the requirements of this proposed task without having a potential or perceived conflict of interest, it is neither feasible nor desirable to disqualify URS Consultants, Inc., from subcontract award in accordance with 48 CFR 909.570(a)(1). Furthermore, it is not possible to totally avoid the organizational conflicts of interest by inclusion of appropriate conditions in the resulting subcontract, pursuant to 48 CFR 909.570–9(a)(2).

Mitigation

This is a subcontract for a specific work directive for one specific task assignment. The Contracting Officer's Technical Representative and the Contracting Officer have reviewed the subcontractor's proposed mitigation plan for this specific task assignment. In addition, the Organizational Conflicts of Interest Special Clause, entitled "Organizational Conflicts of Interest—Special Clause (DEAR 952.209–72)," has been included in the subcontract between Ebasco Environmental and URS Consultants.

Determination

In light of the above findings and mitigation, and in accordance with 48 CFR 909.570–9(a)(3), the proposed subcontract award is in the best interest of the United States.

Dated: May 30, 1990.

James R. Higgins,

Director, Procurement Operations Division, Federal Energy Regulatory Commission.

[FR Doc. 90–12937 Filed 6–4–90; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3784–7]

Region VII; Announcement of Actions Taken Under the PSD Regulation: Iowa

Notice is hereby given that the Environmental Protection Agency (EPA), Region VII, has taken the following actions under the federal prevention of significant deterioration of air quality (PSD) regulation, 40 CFR part 52 (specifically, 40 CFR 52.21):

The following PSD permits were revised or reissued: James River Corporation (H.P. Smith Division), Iowa City, Iowa, plant: A PSD permit was issued to the company on July 3, 1985, for two new release paper coating lines and other related equipment. Release paper is used in the tapes and label industry (Standard Industrial Code: 2641). The coating lines are a major emitter of volatile organic compounds (VOC). The company commenced construction on one of the coating lines before the deadline that was set forth in the permit. The company subsequently requested EPA's approval to modify the installed coating line and for reissuance of the permit for the second coating line. The proposed modification of the installed line involved an increase of the exhaust air volume of the installed dryer unit and the addition of another thermal incinerator. The proposed modification of the installed line was approved as proposed. A permit was reissued for the second line. The VOC best available control technology (BACT) emission standard for the second line was intensified following a reevaluation of the original BACT decision. The permit for the installed coating line was revised and the agency's approval of the second coating line was reissued as discussed above on November 17, 1988.

Archer Daniels Midland Company, Cedar Rapids, Iowa plant and Archer Daniels Midland Company, Des Moines, Iowa plant: Separate PSD permits were issued to the company on October 21, 1986, and January 13, 1987 for coal-fired fluidized bed boilers at the above-mentioned plants. The permits set forth emission standards for various air pollutants based on the company's proposal to burn Iowa coal (and equivalent coal) in the boilers. The permits also required the agency's prior approval (and, possibly, a permit modification) before an alternative fuel could be burned in the boilers. The company subsequently requested the agency's approval to burn low sulfur western coal in the boilers in addition to the originally approved Iowa coal, and blends of these coals. The agency revisited the sulfur dioxide (SO_2) BACT standards of the original permits. The agency granted the company's request upon the establishment of revised SO_2 BACT standards. The original approvals were expanded to include all bituminous/subbituminous coals capable of being burned in compliance with the SO_2 BACT standards of the original permits. Numerous other revisions also were made to the original permits. *Modifications Issued:* March 1, 1990.

Under section 307(b)(1) of the Clean Air Act (the Act), judicial review of any of the above actions is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within sixty (60) days from the date of publication of today's notice. Under section 307(b)(2) of the Act, any requirements associated with the above actions may not be challenged later in civil or criminal proceedings that may be brought by the EPA to enforce the requirements. The above determinations do not relieve the applicable sources of their responsibilities under other federal, state, and local regulations.

For the above actions, the appropriate court is the U.S. Court of Appeals for the Eighth Circuit. A petition for review must be filed on or before August 6, 1990.

Copies of the above actions and related information are available for public inspection at the following

location: U.S. Environmental Protection Agency, Region VII, Air and Toxics Division, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Interested individuals may also contact Ms. JoAnn M. Heiman, Chief, Air Compliance Section, Air Branch, Air and Toxics Division, or Dan Rodriguez at (913) 551-7020 (FTS: 276-7020).

Dated: May 16, 1990.

William Rice,

Acting Regional Administrator.

[FR Doc. 90-12976 Filed 6-4-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3784-9]

Fuels and Fuel Additives; Waiver Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On May 9, 1990, the Ethyl Corporation (Ethyl) submitted an application for a waiver of the prohibition against the introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act (Act). This application seeks a waiver for the gasoline additive, methylcyclopentadienyl manganese tricarbonyl (MMT), an octane enhancer, commercially labeled by Ethyl as HITEC 3000, to be blended in unleaded gasoline resulting in a level of 0.03125 (1/32) gram per gallon manganese (gpg Mn). The Administrator of EPA has until November 5, 1990 to grant or deny this application. If not denied by that date, it will be deemed to be granted, under section 211(f)(4).

DATES: EPA will conduct a one-day public hearing on this application beginning at 8:30 a.m. on June 22, 1990 at the U.S. EPA Auditorium located in the EPA Education Center (Northwest Mall Entrance), 401 M Street SW., Washington, DC 20460. Comments on this application will be accepted until July 22, 1990. Parties wishing to testify at the hearing should contact David J. Kortum or James W. Caldwell by June 15, 1990 at (202) 382-2635. It is also requested that six copies of prepared hearing testimony be available at the time of the hearing for distribution to the hearing panel. Hearing testimony should also be submitted to the docket. Additional information on the submission of comments to the docket may be found below in the "**ADDRESSES**" section of this notice.

ADDRESSES: Copies of the information relative to this application are available for inspection in public docket A-90-16 at the Air Docket (LE-131) of the EPA, room M-1500, 401 M Street SW., Washington, DC 20460, (202) 382-7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. weekdays. Any comments from interested parties should be addressed to this docket with a copy forwarded to Mary T. Smith, Director, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 46 FR 38582 (July 28, 1981). Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer, the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application (in this case, by November 5, 1990), the statute provides that the waiver shall be treated as granted.

The current submission by Ethyl is an application under section 211(f)(4) of the Act for a waiver for the fuel additive methylcyclopentadienyl manganese tricarbonyl (MMT), commercially labeled by Ethyl as HITEC 3000, to be blended in unleaded gasoline resulting in a level of 0.03125 (1/32) gram per gallon manganese (gpg Mn). This is Ethyl's third application for a waiver for MMT. Ethyl's first application was submitted on March 17, 1978 for concentrations of MMT resulting in 1/16 and 1/32 gpg Mn in unleaded gasoline. Ethyl's second application was submitted on May 26, 1981 for concentrations of MMT resulting in 1/64 gpg Mn in unleaded gasoline. The Administrator denied these requests for waivers. The decisions and justifications thereof may be found in the September 18, 1978 Federal Register, 43 FR 41424, and the December 1, 1981 **Federal Register**, 46 FR 58630. If the prohibitions against MMT were waived by the Administrator, it is highly likely that most U.S. gasoline would contain some level of MMT, and, therefore, it is also highly likely that fuels used in certifying vehicles under section 206 of the Act, would be required to reflect this compositional change. EPA invites comments on whether the Administrator should grant or deny this waiver application.

Dated: May 29, 1990.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 90-12978 Filed 6-04-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44553; FRL 3763-9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on Octamethylcyclotetrasiloxane (OMCTS) (CAS No.556-67-2), and diisodecyl phenyl phosphite (PDDP), (CAS No. 25550-98-5), submitted pursuant to a consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for OMCTS was submitted by Silicones Health Council on behalf of

the SHC member companies pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on May 10, 1990. The submission describes: (1) Acute toxicity to sheepshead minnow (2) acute toxicity to mysid shrimp, (3) acute toxicity to daphnids, (4) chronic toxicity to daphnids, (5) toxicity to the freshwater *selenastrum capricornutum*. These tests are required by this test rule. This chemical is used as an intermediate in the production of polydimethylsiloxane.

Test data for PDDP was submitted by General Electric Specialty Chemicals on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on May 22, 1990. The submission describes a subchronic delayed neurotoxicity study in mature hens. Neurotoxicity testing is required by this test rule. This chemical is used primarily as a low-cost light stabilizer and secondary antioxidant for polymeric materials.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44553). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: May 30, 1990.

Charles M. Auer,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 90-12973 Filed 6-4-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

Applications, Hearings, Determinations, et al.; Bonne Broadcasting, Inc.; et al

1. The Commission has before it the following mutually exclusive applications for 4 new FM stations:

I.

Applicant, city, and state	File No.	MM Docket No.
A. Bonne Broadcasting, Inc.; Larose, LA.	BPH-880630MK	90-247
B. Electronics Unlimited, Inc.; Larose, LA.	BPH-880630MP	.....
C. Elizabeth L. Cooley; Larose, LA.	BPH-8806300A	.....

Issue Heading and Applicants

1. Comparative, A,B,C
2. Ultimate, A,B,C

II.

Applicant, city, and state	File No.	MM Docket No.
A. Five Star Broadcasting, Inc.; Pocomoke City, MD.	BPH-880714MU	90-248
B. Terrace Communications, Inc.; Pocomoke City, MD.	BPH-880714NV	.....
C. Transmedia, Inc.; Pocomoke City, MD.	BPH-880714NW	.....

Issue Heading and Applicants

1. Comparative, A,B,C
2. Ultimate, A,B,C

III.

Applicant, city, and state	File No.	MM Docket No.
A. WMRI, Inc.; Bremen, IN.	BPH-880722MH	90-245
B. GEM Communications; Bremen, IN.	BPH-880725MI	.....
C. Atlantic Resources Corporation; Bremen, IN.	BPH-880725MJ	.....

Issue Heading and Applicants

1. Air Hazard, B
2. Comparative, A,B,C
3. Ultimate, A,B,C

IV.

Applicant, city, and state	File No.	MM Docket No.
A. Hughes-Moore Associates, Inc.; London, Kentucky.	BPH-880816NH	.....
B. Ethel Huff; London, Kentucky.	BPH-880817MH	.....

Issue Heading and Applicants

1. Air Hazard, A
2. Environmental, A
3. Comparative, A,B
4. Ultimate, A,B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 41 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 90-13001 Filed 6-4-90; 8:45 am]

BILLING CODE 6712-01-M

Applications, Hearings, Determinations et.: Lindsay Broadcasting et al.

1. The Commission has before it the following mutually exclusive applications for 5 new FM stations:

I.

Applicant, city, and state	File No.	MM docket No.
A. Linda Ware, d/b/a Lindsay Broadcasting; Lindsay, CA.	BPH-880504ME	90-225
B. Lindsay Broadcasting Company; Lindsay, CA.	BPH-880505MX	.....
C. Carlos H. Uribe and Nelly Uribe, d/b/a Lindsay FM Radio Lindsay, CA.	BPH-880505OC	.....
D. Correia Broadcasting, Inc.; Lindsay, CA.	BPH-880505PH	.....

Issue Heading and Applicants

1. Air hazard, A,D
2. Financial, B,D
3. Comparative, A,B,C,D
4. Ultimate, A,B,C,D

II.

Applicant, city, and state	File No.	MM docket No.
A. Jana R. Partridge; Meridian, MS.	BPH-880505MF	90-229
B. Circle Communications Inc.; Meridian, MS.	BPH-880505NK	.....
C. Radio Meridian, L.P.; Meridian, MS.	BPH-880505PP	.....
D. Charisma Communications Co.; Meridian, MS.	BPH-880505PU	.....
E. Earnest Tiger and Harold McBrayer; Meridian, MS.	BPH-8805050L	.....

Issue Heading and Applicants

1. Air Hazard, B
2. Comparative, A,B,C,D
3. Ultimate, A,B,C,D

III.

Applicant, city, and state	File No.	MM docket No.
A. Rucker Radio; Fort Rucker, AL.	BPH-880407MJ	90-236
B. Sky Way Broadcasting, Ltd.; Fort Rucker, AL.	BPH-880407NA	.....

Issue Heading and Applicants

1. Air Hazard, B
2. Comparative, Both Applicants
3. Ultimate, Both applicants

IV.

Applicant, city, and state	File No.	MM docket No.
A. Fine Arts Radio, Inc.; Culford, CT.	BPED-880331MB	90-237
B. Totoket Educational Fellowship, Inc.; North Branford, CT.	BPED-880809MW	.....

Issue Heading and Applicants

1. Share-time, A,B
2. 307(b), A,B
3. Contingent Comparative, A,B
4. Ultimate, A,B

V.

Applicant, city, and state	File No.	MM docket No.
A. Josephine Broadcasting Limited Partnership; Erie, PA.	BPH-880309MD	90-230
B. North Coast Broadcasting Company, Inc.; Erie, PA.	BPH-880310MC	.....
C. GMT Broadcasting, Inc.; Erie, PA.	BPH-880310MP	.....
D. Vector Broadcast Group; Erie, PA.	BPH-880310MQ	.....
E. Gary M. Joseph; Erie, PA.	BPH-880310MV	.....
F. Peninsula Broadcasting Corp.; Erie, PA.	BPH-880310MX	.....
G. Ben Wiley and Dorothy Smith d/b/a Ebony Partnership; Erie, PA.	BPH-880310MY	.....
H. S&S Communications; Erie, PA.	BPH-880310NE	.....
I. Casciani Communications Inc.; Erie, PA.	BPH-880310NP	.....
J. The Moody Bible Institute of Chicago; Erie, PA.	BPED-880310OB	.....

Issue Heading and Applicants

1. Air Hazard, B,I,J
2. Comparative, A–J
3. Ultimate, A–J

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 90-13002 Filed 6-4-90; 8:45 am]

BILLING CODE 6712-01-M

Applications, Hearings, Determinations, et.; McCabe, Patrick M., et al.

1. The Commission has before it the following mutually exclusive applications for 5 new FM stations:

I.

Applicant, city, and state	File No.	MM docket No.
A. Patrick M. McCabe; Paynesville, MN.	BPH-880826MH	90-223
B. Radio Research Development, Inc.; Paynesville, MN.	BPH-880913MB	.....
C. Hicks Broadcasting Corporation; Paynesville, MN.	BPH-880914ML	.....
D. Margaret Lannannae Lehner; Paynesville, MN.	BPH-880914MN	.....

Issue Heading and Applicants

1. Air Harzard, C
2. Comparative, All
3. Ultimate, All

II.

Applicant, city, and state	File No.	MM docket No.
A. Marked Tree Media Partnership; Marked Tree, AR.	BPH-880518ML	90-224
B. George S. Flinn, Jr.; Marked Tree, AR.	BPH-880519NU	.....

Issue Heading and Applicants

1. Environmental, B
2. Air Hazard, B
3. Comparative, A, B
4. Ultimate, A,B

III.

Applicant, city, and state	File No.	MM docket No.
A. SaltAire Communications, Inc.; Pawcatuck, CT.	BPH-880229NG	90-226
B. Stonington Communications, L.P.; Pawcatuck, CT.	BPH-880301NP	.....
C. Charles S. Fitch, P.E.; Pawcatuck, CT.	BPH-880301NW	.....
D. WHSL Corporation; Pawcatuck, CT.	BPH-880301OF	.....
E. Kathleen Hinds; Pawcatuck, CT.	BPH-880301OX	.....

Issue Heading and Applicants

1. Air Hazard, B,E

2. Comparative, A–E
3. Ultimate, A–E

IV.

Applicant, city, and state	File No.	MM docket No.
A. Carterville Broadcasting, Inc.; Carterville, IL.	BPH–880420MD	90–225
B. Marilyn Pranno; Carterville, IL.	BPH–880421MA	.....
C. Meeks Broadcasting Company; Carterville, IL.	BPH–880421NC	.....
D. Rebekah L. and Larry R. Roethe, d/b/a R&R Communications; Carterville, IL.	BPH–880421NX	.....

Issue Heading and Applicants

1. Comparative, All
2. Ultimate, All

V.

Applicant, city, and state	File No.	MM docket No.
A. Rev. J. Bazzel and Elizabeth Mull, d/b/a Seymour Communications; Seymour, TN.	BPH–870619MB	90–234
B. Carmel Communications Limited Partnership; Seymour, TN.	BPH–870625MJ	.....

Issue Heading and Applicants

1. See Appendix, B
2. See Appendix, B
3. See Appendix, B
4. Comparative, Both
5. Ultimate, Both

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standard issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Seymour, Tennessee)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of B (Carmel).
2. To determine whether B's (Carmel's) organizational structure is a sham.
3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether B (Carmel) prossesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90–13003 Filed 6–4–90; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Revision of 3067–0163.

Title: Individual and Family Grant (IFG) Program Information.

Abstract: The information collection is necessary for effective monitoring and management of the IFG program. While States administer the program, FEMA regional office staff (Disaster Assistance Programs Division) are responsible for monitoring the State's performance and adherence to FEMA regulations and policy guidance. Without the information FEMA would be unable to determine whether IFG programs are being managed efficiently, standards of uniformity and consistency are being met, and taxpayers' money is being spent appropriately.

The forms included in the collection are FEMA Form 76–28, Status Report; FEMA Form 76–30, Environmental Review, IFG Program; FEMA Form 76–34, Checklist for IFG Program Review; and FEMA Form 76–38, Floodplain Management Analysis.

Type of Respondents: State or local governments; Federal agencies or employees.

Estimate of Total Annual Reporting and Recordkeeping Burden: 1,978.

Number of Respondents: 100.

Estimated Average Burden Hours Per Response: 1.10 Hours.

Frequency of Response: On occasion, weekly, monthly.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: May 22, 1990.

Wesley C. Moore,
Director, Office of Administrative Support.

[FR Doc. 90–12958 Filed 6–4–90; 8:45 am]
BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New Collection.

Title: Survey of Louisiana Public Officials in Communities Vulnerable to Flooding.

Abstract: The survey will be conducted in Louisiana communities to obtain information about the attitudes of public officials toward choosing certain flood hazard mitigation measures for implementation after a flood disaster. Results will give FEMA an understanding of the local decisionmaking process in order to better enforce regulations of the National Flood Insurance Program. With the results of the survey, State and Federal agencies can modify funding programs, regulations, and education efforts to promote mitigation and the reduction of flood losses in communities.

A pre-test will be conducted of 10 public officials in each of 5 randomly

selected Louisiana communities participating in the National Flood Insurance Program (NFIP); the final will survey 10 public officials in each of 50 Louisiana communities in the NFIP.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 413 Hours (38 Hours—Pre-Test; 375 Hours—Final Survey).

Number of Respondents: 50—Pretest; 500—Final.

Estimated Average Burden Hours Per Response: .75 Hours.

Frequency of Response: One-Time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: May 22, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90–12959 Filed 6–4–90; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–865–DR]

Arkansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–865–DR), dated May 15, 1990, and related determinations.

DATED: May 25, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Arkansas, dated May 15, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 15, 1990:

The counties of Conway, Hempstead, Izard, Lafayette, Pike, and Stone for Individual Assistance and Public Assistance; and

The counties of Faulkner, Garland, Little River, Miller, Perry, and Pulaski for Public Assistance. (These counties were previously designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–12960 Filed 6–4–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–868–DR]

Iowa; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–868–DR), dated May 26, 1990, and related determinations.

DATED: May 26, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia S. Bowman, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2661.

NOTICE: Notice is hereby given that, in a letter dated May 26, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms and flooding beginning on May 18, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be provided at a later time, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of Section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Phil Zaferopulos, of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster: The counties of Crawford, Plymouth, and Woodbury for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Jerry D. Jennings,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 90–12961 Filed 6–5–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–867–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA–867–DR), dated May 24, 1990, and related determinations.

DATED: May 27, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Missouri, dated May 24, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 24, 1990: Green County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–12962 Filed 6–4–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-867-DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA-867-DR), dated May 24, 1990, and related determinations.

DATED: May 24, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice

Notice is hereby given that, in a letter dated May 24, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq., Public Law 93-288, as amended by Public Law 200-707), as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms and flooding beginning on May 15, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be provided later if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of Section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joan F. Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster: Jackson County, Webster County, and the City of Kansas City for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Antonio Lopez,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 90-12963 Filed 6-4-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-859-DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-859-DR), dated February 28, 1990, and related determinations.

DATED: May 23, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated February 28, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 1990:

The counties of Jones and Kemper for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-12964 Filed 6-4-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-866-DR]

Oklahoma; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA-866-DR), dated May 18, 1990, and related determinations.

DATES: May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Oklahoma, dated May 18, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 18, 1990: Payne County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-12965 Filed 6-4-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-863-DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-863-DR), dated May 2, 1990, and related determinations.

DATED: May 24, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 2, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 2, 1990:

The counties of Cass, Freestone, Throckmorton, Van Zandt, and Wichita for Individual Assistance; and

The counties of Denton, Eastland, Palo Pinto, Throckmorton, and Young for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Acting Deputy Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-12966 Filed 6-4-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed; San Francisco Port Commission/ Evergreen Marine Corp. (Taiwan) Ltd. et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200328–001

Title: San Francisco Port Commission/Evergreen Marine Corp. (Taiwan) Ltd. Terminal Agreement.

Parties:

San Francisco Port Commission.
Evergreen Marine Corp. (Taiwan) Ltd.

Synopsis: The Agreement extends the basic revenue sharing agreement until June 30, 1990.

Agreement No.: 224–200199–001

Title: City of Long Beach/Cooper/T. Smith Stevedoring Co., Inc. Terminal Agreement.

Parties:

City of Long Beach.
Cooper/T. Smith Stevedoring Co., Inc.

Synopsis: The Agreement amends the basic agreement to provide for the use of a portion of the assigned premises as a scrap metal containment facility and a different compensation formula.

Agreement No.: 224–200326–001

Title: Sea-land Service, Inc./Sea-Shuttle, Inc. Terminal Agreement.

Parties:

Sea-land Service, Inc.
Sea-Shuttle, Inc.

Synopsis: The Agreement amends the basic agreement to provide that no amendment of the agreement's Schedule B shall be implemented until it becomes effective under the Shipping Act of 1984.

By Order of the Federal Maritime Commission.

Dated: May 31, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–12929 Filed 6–4–90; 8:45 am]

BILLING CODE 6730–01–M

Security for Protection of Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons On Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Royal Caribbean Cruises Ltd., Nordic Empress Shipping Inc. and Nordic Empress Ltd., 903 South America Way, Miami, FL 33132.
Vessel: Nordic Empress.

Dated: May 30, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–12928 Filed 6–4–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051490 and 052590

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Teradata Corporation, ShareBase Corporation, ShareBase Corporation	90–1304	05/14/90
Monsanto Company, Newco, Newco	90–1376	05/14/90
Exxon Corporation, Newco, Newco	90–1377	05/14/90
Mitsubishi Motors Corporation, Sidney H. Cohen, Value Rent-A-Car, Inc.	90–1395	05/14/90
Mitsubishi Motors Corporation, Sidco Realty Corp. Sidco Realty Corp.	90–1396	05/14/90
Edison Brothers Stores, Inc., Robert A. Nahodil, Adventure Properties Ltd. and Consolidated Amusement Co.	90–1461	05/14/90
Brierley Investments Limited, Petroleum Helicopters, Inc., Petroleum Helicopters, Inc.	90–1379	05/15/90
Brynwood Partners, II L.P., Philips NV, Genie Manufacturing, Inc.	90–1452	05/15/90
Wasserstein Perella Partners, L.P., SmithKline Beecham p.l.c., Yardley and Company	90–1456	05/15/90
Wasserstein Perella Partners, L.P., Old Bond Street Acquisition Corp., Old Bond Street Acquisition Corp.	90–1457	05/15/90
Spinnaker Investor Partners, L.P., Klockner-Humboldt-Deutz AG, Deutz-Allis Corporation	90–1459	05/15/90
Chevron Corporation, Black Beauty Resources, Inc., Black Beauty Resources, Inc.	90–1464	05/15/90
H.F. Lenfest, Western Union, Corporation, Western Union Corporation	90–1391	05/17/90
Sotheby's Holdings, Inc., The Estate of Pierre Louis Auguste Matisse, Pierre Matisee Gallery Corporation	90–1411	05/17/90
Norwest Corporation, The John Breuner Company, The John Breuner Company	90–1436	05/17/90
Usinor Sacilor, Speciality Materials Corporation, Speciality Materials Corporation	90–1176	05/18/90
Burlington Resources Inc., Dan J. Harrison, III, Harrison Interests, Ltd.	90–1416	05/18/90
Kelso Investment Associates IV, L.P., Issam M. Fares, Merchants Truckload Company	90–1430	05/18/90
Thomas H. Lee, Equity Partners, L.P., Thomas H. Lee, Anchor Acquisition Corp.	90–1463	05/18/90
Teachers Insurance and Annuity Association, Robert D. Dutcher, EDS Properties—Salem	90–1485	05/18/90
Teachers Insurance and Annuity Association, Edward C. Ellis, EDS Properties—Salem	90–1486	05/18/90

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051490 and 052590—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
BET Public Limited Company, Lonnie E. Duncan and Dolores J. Duncan, Adco Equipment, Inc.	90-1496	05/18/90
Dean Foods Company, Ranks Hovis McDougall PLC, Pilgrim Farms, Inc.	90-1404	05/21/90
MA Associates, L.P., Kenneth R. Thomson*, Certain assets of Thomson Publishing Corporation	90-1444	05/21/90
D. Morgan Firestone, Alltel Corporation, Denro, Inc.	90-1489	05/21/90
William E. Brown, Weyerhaeuser Company, Weyerhaeuser Garden Supply Company	90-1420	05/22/90
Fluor Corporation, Fluor Corporation, The Doe Run Company	90-1492	05/22/90
Jeffrey J. Steiner, Rex-PT Holdings Inc., Rex-PT Holdings Inc.	90-1384	05/23/90
KD Associates II, Gerber Products Company, Gerber Children's Centers, Inc.	90-1494	05/24/90
Blackstone Capital Partners, L.P., Franchise Holdings Corporation, Franchise Holdings Corporation	90-1502	05/24/90
Prime Motor Inns, Inc., Franchise Holdings Corporation, Franchise Holdings Corporation	90-1504	05/24/90
Swiss Reinsurance Company, European International Holding Company Ltd., Gay & Taylor, Inc.	90-1512	05/25/90
Public Service Enterprise Group Incorporated, Gateway Village Partners, Gateway Village Partners	90-1513	05/25/90
Saratoga Partners II, L.P., Fluor Corporation, Pea Ridge Iron Ore Company, Inc.	90-1519	05/25/90
HCS, The Dai-Tokyo Fire and Marine Insurance Company, Ltd., Southwest International Reinsurance Company	90-1520	05/25/90

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton Contact Representatives; Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-12957 Filed 6-4-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Notice of Hearing; Reconsideration of Disapproval of Iowa Medicaid State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on July 19, 1990 in room 215, New Federal Office Building, 601 East 12th Street, Kansas City, Missouri, to reconsider our decision to disapprove Iowa State Plan Amendment 89-09.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk on June 20, 1990.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Telephone: (301) 966-4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Iowa State Plan amendment (SPA) number 89-09.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Iowa SPA 89-09 proposes a reduction in the base year rate for payment to inpatient hospitals. The State has indicated that a 10.4 percent reduction is necessary to account for changes in the case-mix and to compensate for increases in disproportionate share and medical education payments.

The issue in this matter is whether the State's assurance to the Secretary that the proposed rates are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities, as required by 42 CFR 447.253(b)(1) and section 1902(a)(13)(A) of the Act, is satisfactory.

Section 1902(a)(13)(A) of the Act requires, in part, that States make payments for inpatient hospital services through the use of rates calculated under an approved State plan. The State is also required by this provision to make a finding and provide assurances satisfactory to the Secretary, that these rates are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities.

The proposed amendment specified a 10.4 percent payment reduction to the base year rate for inpatient hospital services. The State explained that the reduction was required by a persistent upward trend in each hospital's case mix and to compensate for increases in disproportionate share and medical education payments. Transmittal number 89-09 was submitted to incorporate this change in the payment of inpatient hospital services into the State plan. The State furnished an assurance statement, as required by 42 CFR 447.253(b)(1), stating that its proposed payment rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers. However, HCFA has determined that the State's assurance failed to provide information to substantiate that the payment rates meet this requirement. Consequently, HCFA concluded that the proposed State plan amendment, transmittal number 89-09, is not in accordance with the requirements of section 1902(a)(13)(A) of the Act or 42 CFR 447.253(b)(1) of the Federal regulations.

The notice to Iowa announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Charles M. Palmer,

Director, Iowa Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114

Dear Mr. Palmer: I am responding to your request for reconsideration of the decision to disapprove Iowa State Plan Amendment (SPA) 89-09. The State of Iowa has proposed a reduction in the base year rate for payment

to inpatient hospitals. The State has indicated that a 10.4 percent reduction is necessary to account for changes in the case-mix and to compensate for increases in disproportionate share and medical education payments.

The issue in this matter is whether the State's assurance to the Secretary that the proposed rates are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities as required by section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.253(b)(1) of the Federal regulations is satisfactory.

I am scheduling a hearing on your request to be held on July 12, 1990, at 10 a.m. in room 215, New Federal Office Building, 601 East 12th Street, Kansas City, Missouri. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4471.

Sincerely,

Gail R. Wilensky,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: May 30, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-12972 Filed 6-4-90; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-90-3093]

Submission of Proposed Information Collection to OMB

AGENCY: Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

AUTHORITY: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 29, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Survey of Market Absorption of New Apartment Buildings (SOMA).
Office: Policy Development and Research.
Description of the Need for the Information and its Proposed Use: The survey measures the rate at which different types of new rental and condominium apartments are absorbed, i.e., taken off the market. It provides a basis for analyzing the degree to which apartment building activity is meeting present and future needs.
Form Number: H-31.
Respondents: Businesses or other for-profit.
Frequency of Submission: Quarterly and on occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
H-31	12,000		1		.3		3,600

Total Estimated Burden Hours: 3,600.
Status: Extension.
Contact: Connie Casey, HUD, (202) 755-5060, Scott Jacobs, OMB, (202) 395-6880.

Dated: May 29, 1990.

[FR Doc. 90-12954 Filed 6-4-90; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-90-3092]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

AUTHORITY: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 30, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Budget Rent Increases Process and Energy Conservation Certification.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Owners of certain cooperative, subsidized, and 202 projects will be required to submit the Budget Worksheet and energy conservation certification when requesting a rent increase. The Department will use the information to evaluate owner expense estimates. The Worksheet is designed to allow HUD and owner automation of the budgeted rent increase process.

Form Number: HUD–92547–A.

Respondents: Businesses or other for-profits and Federal agencies or employees.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92547–A	12,500		1		2		25,000
Recordkeeping	12,500		1		.5		6,250

Total Estimated Burden Hours: 31,250.

Status: Reinstatement.

Contact: James T. Tahash, HUD, (202) 426–3944, John Allison, OMB, (202) 395–6880.

Dated: May 30, 1990.

[FR Doc. 90–12955 Filed 6–4–90; 8:45 am]

BILLING CODE 4210–01–M

Office of Environment and Energy

[Docket No. I–90–158]

Intended Environmental Impact Statement: New Middle School Project, Rochester, NY

The Department of Housing and Urban Development gives notice that the City of Rochester, NY intends to prepare an Environmental Impact Statement (EIS) for the construction of a new middle school located in the City's northeast quadrant as described in the appendix to this notice. This notice is in accordance with regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

Interested individuals, governmental agencies and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and data which the EIS should consider, and recommended mitigating measures and alternatives associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interest should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

This notice shall be effective for 1 year. If 1 year after the publication of the notice in the **Federal Register** a Draft EIS has not been filed on a project, then the notice for that project shall be cancelled. If a Draft EIS is expected more than 1 year after the publication of the notice in the **Federal Register** then a new and updated notice of intent will be published.

Dated: May 25, 1990.

Richard H. Broun,

Director, Office of Environment and Energy.

The City of Rochester, NY (City) intends to prepare an Environmental Impact Statement (EIS) on a project described below and hereby solicits comments and information for consideration in the EIS from affected Federal, State and local agencies; any affected Indian tribes; and other interested persons.

Description: The proposed project is the new construction of one public middle school to house approximately 1000 pupils in grades 6 through 8. The new school will be located in the City's northeast quadrant. New York State standards require a 21 acre site for this type of facility. A 1991 construction start is anticipated, with occupancy by Fall, 1993.

Federal funding for the project is expected to be from the Community Development Block Grant Program. The project cost is estimated at $17.7 million.

Need: The decision to prepare an EIS has been based upon the project's potential impacts upon traffic, historic resources, open space and neighborhood character. The project will also result in the displacement of existing occupants from the selected site. In addition to the subject project, the Rochester City School District has proposed construction of two new elementary schools in the City's northeast sector and the cumulative impacts of all three projects may be significant. It is also the policy of the NYS Dept. of Education to

require the preparation of an EIS for all new schools.

Alternatives: Alternatives being considered include:

1. No action;
2. Proposed action/preferred alternative;
3. Site locations;
4. Site size and configuration; and
5. Appropriate mitigation measures.

Scoping: Responses to this notice will be used to:

1. Determine significant environmental issues;
2. Identify data which the EIS should address; and
3. Identify agencies and other parties which will participate in the EIS process and the basis for their involvement.

Comments: Comments should be sent within fifteen days of publication of this notice to Robert M. Barrows, Office of Planning, City Hall room 125–B, 30 Church Street, Rochester, New York 14614; Telephone (716) 428–6924.

[FR Doc. 90–12952 Filed 6–4–90; 8:45 am]
BILLING CODE 4210–29–M

[Docket No. I–90–157]

Intended Environmental Impact Statement: No. 25 and No. 36 School Replacement Project, Rochester, NY

The Department of Housing and Urban Development gives notice that the City of Rochester, NY intends to prepare an Environmental Impact Statement (EIS) for the construction of a new elementary school to replace schools No. 25 and No. 36 as described in the appendix to this notice. This notice is in accordance with regulations of the Council on Environmental Quality under it rule (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and data which the EIS should consider, and recommended mitigating measures and alternatives associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interest should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

This notice shall be effective for 1 year. If 1 year after the publication of the notice in the **Federal Register** a Draft EIS has not been filed on a project, then the notice for that project shall be cancelled. If a Draft EIS is expected more than 1 year after the publication of the notice in the **Federal Register** then a new and updated notice of intent will be published.

Dated: May 5, 1990.

Richard H. Brown,

Director, Office of Environment and Energy.

Appendix

The City of Rochester, NY (City) intends to prepare an Environmental Impact Statement (EIS) on a project described below and hereby solicits comments and information for consideration in the EIS from affected Federal, State and local agencies; any affected Indian tribes; and other interested person.

Description: The proposed project is the new construction of one public elementary school to house approximately 800 pupils in grades kindergarten through 5. The new school will replace the Rochester City School District's existing No. 25 School (c. 1914) located at 965 North Goodman Street, and No. 36 School (c. 1898) located at 65 St. Jacob Street.

New York State standards require an 11 acre site for this type of facility. The new school will be located in the same general area as the existing schools. A 1992 construction start is anticipated, with occupancy by Fall, 1994.

Federal funding for the project is expected to be from the Community Development Block Grant Program. The project cost is estimated at $10.8 million.

Need: The decision to prepare an EIS has been based upon the project's potential impacts upon traffic, historic resources, open space and neighborhood character. The project will also result in the displacement of existing occupants from the selected site. In addition to the subject project, the Rochester City School District has proposed construction of two additional new schools in the City's northeast sector and the cumulative impacts of all three projects may be significant. It is also the policy of the NYS Dept. of Education to require the preparation of an EIS for all new schools.

Alternatives: Alternatives being considered include:

1. No action;
2. Proposed action/preferred alternative;
3. Site locations;
4. Site size and configuration; and
5. Appropriate mitigation measures.

Scoping: Responses to this notice will be used to.

1. Determine significant environmental issues;
2. Identify data which the EIS should address; and
3. Identify agencies and other parties which will participate in the EIS process and the basis for their involvement.

Comments: Comments should be sent within fifteen days of publication of this notice to Robert M. Barrows, Office of Planning, City Hall room 125–B, 30 Church Street, Rochester, New York 14614; Telephone (716) 428–6924.

[FR Doc. 90–12953 Filed 6–4–90; 8:45 am]
BILLING CODE 4210–9–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Education Contracts Under Johnson-O'Malley Act Application and Regulatory Requirements, CFR 273.

OMB approval number: 1076–0096.

Abstract: Eligible contractors must meet application, reporting and other regulatory requirements for educational program funding which is supplemental to other sources of funding. Contractors and Indian education committees develop education programs to meet the special and unique needs of eligible Indian students.

Bureau Form Numbers: 62116 and 62118.

Frequency:

No. 62116 Annual.
No. 62118 Semiannual.

Description of Respondents: Tribes, tribal organizations, public school

districts and State departments of education.

Annual Responses: 975.

Annual Burden Hours: 27,365.

Bureau clearance officer: Gail Sheridan, (202) 343–1685.

Edward F. Parisian,

Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs).

[FR Doc. 90–12926 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–02–M

Information Collections Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Budget Clearance Office and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone number (202) 395–7340.

Title: Financial Assistance and Social Services Program (25 CFR Part 20).

OMB approval number: 1076–0017

Abstract: "Eligibility Determinations, Native Americans, Public Assistance Programs."

These forms request financial, demographic, and employment information on clientele for the purpose of determining eligibility to receive financial assistance. These forms allow the Bureau Social Worker to determine the degree of unmet need and arrange for a monthly payment.

Bureau Form Number: 5–6601, 5–6603, 5–6604, 5–6605.

Description of Respondents: Individuals whose needs have not been met and some form of subsistence is required.

Estimated completion time:

Form and Time

5–6601, 6 minutes.
5–6603, 11 minutes.
5–6604, 15 minutes.
5–6605, 9 minutes.

Annual Response: 230,875.

Annual Burden Hours: 2,313,817.

Bureau Clearance Officer: Gail Sheridan (202) 343–6434.

Dated: April 3, 1990.

Ronal Eden,

Acting Deputy to the Assistant Secretary, Indian Affairs (Tribal Services).

[FR Doc. 90–12827 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AA230–09–4310–87]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1004–0001), Washington, DC 20503, telephone (202) 395–7340.

Title: Free Use Application and Permits

OMB Approval Number: 1004–0001

Abstract: This form is used to provide for proper management of material disposal when product sale is not feasible or in the best interest of the Government.

Bureau form number: 5510–1.

Frequency: On Occasion.

Description of respondents: Settlers, residents, miners and nonprofit groups.

Estimated completion time: 5 minutes.

Annual responses: 100.

Annual burden hours: 8.

Bureau Clearance Officer: (Alternate) Gerri Jenkins, (202) 653–8853.

Dated: April 30, 1990.

Michael Penfold,

Assistant Director, Land and Renewable Resources.

[FR Doc. 90–12923 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–84–M

[AA220–00–4322–12–2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0047), Washington, DC 20503, Telephone (202) 395–7340.

Title: Grazing Application-Preference Summary and Transfer, Supplemental Information, 43 CFR part 4110.

OMB approval number: 1004–0047.

Abstract: The combined grazing application is submitted by individuals requesting grazing privileges. It is used to verify qualifications and maintain records on legal permittees.

Bureau form numbers: 4130–1a and 4130–1b.

Frequency: On occasion.

Description of respondents: Individuals stating qualifications for livestock grazing permits.

Estimated completion time: 15 minutes.

Annual responses: 10,000.

Annual burden hours: 2,500.

Bureau Clearance Officer (Alternate): Gerri Jenkins, 202–653–8853.

Dated: March 16, 1990.

Vincent J. Hecker,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 90–12924 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–84–M

[AA220–00–4322–12–2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau's Clearance Officer and to the Office of management and Budget, Paperwork Reduction

Project (1004–0020), Washington, DC 20503, Telephone (202) 395–7340.

Title: Exchange-of-Use Grazing Agreement, 43 CFR part 4130.
OMB approval number: 1004–0020.
Abstract: Individuals or farm owners may request this use agreement for recognition of unfenced and intermingled private land in the grazing capacity and management objectives for an allotment.
Bureau form number: 4130–4.
Frequency: On occasion.
Description of respondents: Individuals grazing livestock on public lands.
Estimated completion time: 20 minutes.
Annual responses: 600.
Annual burden hours: 198.
Bureau Clearance Officer (Alternate): Gerri Jenkins, 202–653–8853.

Dated: March 16, 1990.

Vincent J. Hecker,

Assistant Director, Land and Renewable Resources.

[FR Doc. 90–12925 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–84–M

[AZ–020–00–4212–13; AZA–23360–B]

Realty Actions; Sales, Leases, etc., Arizona

AGENCY: Bureau of Land Management, Interior.

REALTY ACTION: Notice of Exchange of Public Land in Mohave, Santa Cruz, Pima and Yavapai Counties, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 19 N., R. 21 W.,
Sec. 29, S½, S½N½;
Sec. 30, S½NE¼, NW¼NE¼NE¼SE¼, E½W½NE¼SE¼, SW¼SE¼NE¼SE¼, N½NW¼SE¼, N½S½NW¼SE¼.

Comprising approximately 605 acres.

In exchange for the above-described lands, the United States will acquire all or portions of the following described lands from Walter E. Biewer and Edna M. Biewer of Prescott, Arizona or their assigns:

Gila and Salt River Meridian

T. 8 N., R. 2 E.,
Sec. 21, SW¼NW¼, SE¼NW¼, E½SW¼S½SE¼;
Sec. 22, SW¼SW¼;
Sec. 27, NW¼NW¼;
Sec. 28, NE¼NW¼.
T. 15 N., R. 12 W.,
Sec. 18, lot 2.
T. 15 N., R. 13 W.,
Ssec. 13, SW¼NW¼, SW¼;
T. 21 N., R. 17 W.,
Sec. 17, S½N½, S½;
Sec. 19, W½ lot 1, lots 2 to 7, incl., NE¼, E½NE¼NW¼, SE¼NW¼, NE¼SW¼, N½SE¼.
T. 28 N., R. 17 W.,
Sec. 9, all;
Sec. 21, all;
Sec. 29, all;
Sec. 31, all.
T. 29 N., R. 17 W.,
Sec. 25, all;
Sec. 35, N½.
T. 27 N., R. 18 W.,
Sec. 1, all;
Sec. 13, all;
Sec. 25, S½.
T. 28 N., R. 18 W.,
Sec. 25, W½.
T. 19 S., R. 18 E.
Sec. 9, SE¼NE¼;
Sec. 10, SW¼NW¼, SW¼;
Sec. 15, W½SW¼;
Sec. 21, E½E½;
Sec. 22, NW¼, N½SW¼;
Sec. 23, SW¼NW¼NE¼, NE¼NW¼NE¼, SE¼NW¼NE¼, NE¼NE¼, SE¼NE¼;
Sec. 27, S½N½NW¼, S½NW¼, SW¼;
Sec. 28, E½.
T. 20 S., R. 18 E.,
Sec. 9, S½SW¼NE¼, SE¼NE¼, SE¼;
Sec. 10, S½SW¼.
T. 23 S., R. 22 E.,
Sec. 21, NE¼.

Comprising approximately 9,101.76 acres.

This proposed exchange is consistent with the Bureau's land use planning objectives.

Lands being conveyed from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. A–23339, a road right-of-way.
3. All valid existing rights.

The lands to be acquired by the United States will be subject to the easements, permits and other encumbrances detailed in the subject title reports prepared by Transamerica Title Insurance Company.

Upon completion of the official appraisal, the acreage of the offered and/or selected land will be adjusted to equalize the values. All lands to be exchanged are included in this Notice.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public land from appropriation under the public land laws, except exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect shall also exclude appropriation of the subject public land under the mining laws, subject to valid existing rights.

The segregation of the above-described land shall terminate upon issuance of a document conveying title to such land or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: May 30, 1990.

Henri R. Bisson,

District Manager.

[FR Doc. 90–12982, Filed 6–4–90; 8:45 am]

BILLING CODE 4310–32–M

National Park Service

Availability of Environmental Impact Statements; Big Cypress National Preserve, FL

AGENCY: National Park Service, Interior.

ACTION: Notice of availability for I–75 recreational access plan/environmental assessment, Big Cypress National Preserve, Florida.

SUMMARY: This plan will provide the Florida Department of Transportation with the National Park Service's recommendation for development of three recreational access points in the Big Cypress National Preserve. The draft plan will provide the public the opportunity to review this recommendation and recommendations for management of backcountry travel in 128,000 acres added to the preserve in 1988.

DATES: Comments will be accepted on this plan until June 30, 1990.

ADDRESSES: Comments should be addressed to: Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Fagergren, Superintendent, Big Cypress National Preserve, Star Route Box 110, Ochopee, Florida 33943.

Dated: May 25, 1990.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 90–12932 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 26, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 20, 1990.

Carol D. Shull,

Chief of Registration National Register.

ARKANSAS

Stone County

Lackey, George W., House (Stone County MPS), Jct. of King and Washington Sts., Mountain View, 90000992

COLORADO

Larimer County

Rocky Mountain National Park Utility Area Historic District (Boundary Increase) (Rocky Mountain National Park MPS), Beaver Meadows Entrance Rd., Estes Park vicinity, 90000993

Rocky Mountain National Park Utility Area Historic District (Boundary Decrease) (Rocky Mountain National Park MPS), Beaver Meadows Entrance Rd., Estes Park vicinity, 90000994

Las Animas County

Arnet, Adam and Bessie, Homestead (Pinon Canyon Maneuver Site MPS), Address Restricted, La Junta vicinity, 90000938

Cross, John Sanders, Homestead (Pinon Canyon Maneuver Site MPS), Address Restricted, La Junta vicinity, 90000943

Doyle, Mary, Claim (Pinon Canyon Maneuver Site MPS), Address Restricted, La Junta vicinity, 90000939

Haines, Asa T., Homestead (Pinon Canyon Maneuver Site MPS), Address Restricted, La Junta vicinity, 90000941

PCMS Historic Archeological District (Pinon Canyon Maneuver Site MPS), Address Restricted, La Junta vicinity, 90000937

PCMS Prehistoric Archeological District (Pinon Canyon Maneuver Site MPS), Address Restricted, La Junta vicinity, 90000936

Rourke, Eugene, Ranch (Pinon Canyon Maneuver Site MPS), Address Restricted, La Junta vicinity, 90000940

Samuel Taylor Brown's Sheep Camp (Pinon Canyon Maneuver Site MPS), Address Restricted, La Junta vicinity, 90000944

Stevens, Moses B., Homestead (Pinon Canyon Maneuver Site MPS), Address Restricted, La Junta vicinity, 90000942

CONNECTICUT

New Haven County

Pootatuck Wigwams or Reservation, Address Restricted, Southbury, 90000980

GEORGIA

Richmond County

Springfield Baptist Church (Boundary Increase), 114 Twelfth St., Augusta, 90000979

Rockdale County

Conyers Residential Historic District, NW of the central business district, roughly along Main St., Milstead Ave., and Railroad St., Conyers, 90000947

Walker County

Lookout Mountain Fairyland Club, 1201 Fleetwood Dr., Lookout Mountain, 90000991

MINNESOTA

Brown County

Grand Hotel, 210 N. Minnesota St., New Ulm, 90000986

Hennepin County

Minneapolis Brewing Company, Jct. of Marshall St. and 13th Ave. NE., Minneapolis, 90000988

Pioneer Steel Elevator (Grain Elevator Design in Minnesota MPS), 2547 5th St. NE., Minneapolis, 90000945

Houston County

Bridge No. L4013 (Minnesota Masonry-Arch Highway Bridges MPS), Twp. Rd. 126 over Riceford Cr., Spring Grove vicinity, 90000976

Pine County

Willow River Rutabaga Warehouse and Processing Plant, Off Co. Hwy. 61, Willow River, 90000935

Ramsey County

Colorado Street Bridge (Minnesota Masonry-Arch Highway Bridges MPS), E side of S. Wabasha St. near Terrace Park, St. Paul, 90000977

St. Louis County

Hull—Rust—Mahoning Mines Historic District, Roughly bounded by mine dumps NW of Hibbing on S and E and the Laurentian Divide and Mahoning Lakes on N and W, Hibbing vicinity, 90000946

Winona County

Bridge No. L3409 (Minnesota Masonry-Arch Highway Bridges MPS), Twp. Rd. 62 over Garvin Brook, Winona vicinity, 90000978

MISSOURI

Gasconade County

Poeschel, William, House, W. Tenth St. approximately 2 mi. W of Hermann city limits, Hermann vicinity, 90000982

Howard County

Inglewood, 701 Randolph St., Glasgow, 90000981

Jasper County

Scottish Rite Cathedral, 505 Byers Ave., Joplin, 90000989

MONTANA

Sanders County

Bull River Guard Station, On banks of Bull R. near confluence with E. Fork Bull R., Kootenai MF, Noxon vicinity, 90000990

NEBRASKA

Boyd County

White Horse Ranch, SE of Naper between the Keya Paha and Niobrara Rivers, Naper vicinity, 90000984

Dawes County

Chadron Public Library, 507 Bordeaux St., Chadron, 90000985

Dawes County Courthouse (County Courthouses of Nebraska MPS), S. Main St. between 4th and 5th Sts., Chadron, 90000975

Franklin County

Franklin County Courthouse (County Courthouses of Nebraska MPS), 15th Ave. between N and O Sts., Franklin, 90000962

Gosper County

Gosper County Courthouse (County Courthouses of Nebraska MPS), 507 Smith Ave., Elwood, 90000961

Holt County

Holt County Courthouse (County Courthouses of Nebraska MPS), N. 4th St. between E. Clay and Benton Sts., O'Neill, 90000974

Kimball County

Kimball County Courthouse (County Courthouses of Nebraska MPS), 114 E. 3rd St., Kimball, 90000973

Knox County

Knox County Courthouse (County Courthouses of Nebraska MPS), Main St. between Brazile and Bridge Sts., Center, 90000972

McPherson County

McPherson County Courthouse (County Courthouses of Nebraska MPS), Jct. of 6th and Anderson Sts., Tryon, 90000970

Perkins County

Perkins County Courthouse (County Courthouses of Nebraska MPS), Lincoln St. between 2nd and 3rd Sts., Grant, 90000969

Red Willow County

Red Willow County Courthouse (County Courthouses of Nebraska MPS), NW corner Morris Ave. and E. E St., McCook, 90000966

Richardson County

Richardson County Courthouse (County Courthouses of Nebraska MPS), Courthouse Square, Falls City, 90000965

Rock County

Rock County Courthouse (County Courthouses of Nebraska MPS), State St. between Caroline and Bertha Sts., Bassett, 90000968

Saline County

Saline County Courthouse (County Courthouses of Nebraska MPS), 215 S. Court, Wilber, 90000967

Sarpy County

Third Sarpy County Courthouse (County Courthouses of Nebraska MPS), 3rd St. between Washington and Jefferson Sts., Papillon, 90000964

Sioux County

Sioux County Courthouse (County Courthouses of Nebraska MPS), NE corner of Main and 3rd Sts., Harrison, 90000963

Thomas County

Thomas County Courthouse (County Courthouses of Nebraska MPS), 503 Main St., Thedford, 90000971

OHIO

Wood County

Perrysburg Historic District (Boundary Increase), Roughly Maumee R. frontage from Pine to E. Boundary and S side of E. Second St. from Locust to Hickory, Perrysburg, 90000948

SOUTH DAKOTA

Brown County

Pfutzenreuter, George, House, 411 Third St., Hecla, 90000955

Codington County

Appleby Atlas Elevator, 6 mi. S of jct. of US 212 and I 29, Watertown vicinity, 90000957

Custer County

Lampert, Charles and Ollie, Ranch (Ranches of Southwestern Custer Co. MPS), S of Elk Mtns., N of Dewey, Custer vicinity, 90000951

Mann, Irene and Walter, Ranch (Ranches of Southwestern Custer Co. MPS), Schenk Canyon area, just off Co. Rt. 270, Custer vicinity, 90000953

Stearns, William, Ranch (Ranches of Southwestern Custer Co. MPS), E of Elk Mtn., off Co. Hwy. 769, Custer vicinity, 90000952

Towner, Francis Averill (T. A.) and Janet Leach, House, 218 Crook St., Custer, 90000959

Ward, Elbert and Harriet, Ranch (Ranches of Southwestern Custer Co. MPS), E of Elk Mtn., S of US 16, Custer vicinity, 90000950

Young, Edna and Ernest, Ranch (Ranches of Southwestern Custer Co. MPS), Approximately 3 mi. S of Dewey, S of Beaver Cr., Custer vicinity, 90000949

Meade County

H O Ranch Log House, 3 mi. W of Marcus, Marcus vicinity, 90000954

Pennington County

Dinosaur Park, Skyline Dr. SW of Lincoln School, Rapid City, 90000956

Spink County

Markham Farmstead, Jct. of Co. Rts. 4 and 7, Conde vicinity, 90000958

Walworth County

Brown-Evans House, 405 First Ave., W., Mobridge, 90000960

TEXAS

Titus County

Hale Mound Site, Address Restricted, Winfield vicinity, 90000983

The 15-day commenting period has been waived for the following property:

KANSAS

Sedgwick County

Administration Building, McConnell AFB, Wichita, 90000908

[FR Doc. 90–12933 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Daniel Boone National Forest, KY

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: This notice announces the decision of OSM on a request by R.W. Coal Company (RWCC) for a determination of valid existing rights (VER) under section 522(e)(2) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

OSM has determined that RWCC possesses VER for a coal haulroad within the Daniel Boone National Forest in Clay County, Kentucky. This decision will allow RWCC to obtain a Federal surface coal mine permit for the road in question and to use the road to haul coal from a surface coal mine located on adjacent private lands.

ADDRESSES: Documents comprising the administrative record are available for public review and copying during regular business hours at Room 246, Office of Surface Mining Reclamation and Enforcement, Department of Interior, Ten Parkway Center, Pittsburgh, Pennsylvania 15220. Copies of the Director's decision and of relevant notices may be obtained at the same location.

FOR FURTHER INFORMATION CONTACT: Charles Wolf, Office of Program Support, Eastern Field Operations, Office of Surface Mining Reclamation and Enforcement, Department of Interior, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, (412) 937–2897.

SUPPLEMENTARY INFORMATION:

I. Background on VER

Section 522(e) of SMCRA provides that—

After the enactment of this Act and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted * * * on any federal lands within the boundaries of any national forest * * *

Under the Federal regulations at 30 CFR 740.4(a)(4) and 745.13(o), the Secretary of the Interior retains responsibility for making VER determinations on Federal lands within boundaries of any areas specified in section 522(e)(1) or (e)(2) of SMCRA. Under these rules, the Secretary may not delegate this responsibility to a state. Consequently, OSM must make determinations regarding whether parties seeking to undertake surface mining on Federal lands within the areas specified in section 522(e)(1) and 522(e)(2) have VER to conduct surface coal mining operations within these areas. Section 701(28) of SMCRA defines surface coal mining operations as including all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to a site and for haulage.

Under 30 CFR 740.11(a), the approved state regulatory program is applicable to Federal lands in a state. Therefore, OSM uses the state program definition of VER on section 522(e) (1) and (2) Federal lands in states with approved programs.

II. The R.W. Coal Company (RWCC) Request

On January 25, 1990, RWCC submitted to OSM a request for determination of VER for a coal haulroad on Federal land within the Redbird Ranger District of the Daniel Boone National Forest in Clay County, Kentucky (Administrative Record No. 4.0). The proposed haulroad, which is approximately 1,000 feet in length, is needed by RWCC to gain access to a planned surface coal mine on private lands. RWCC intends to improve an unnamed road in order to haul coal from surface mining operations on adjacent private land.

The unnamed road in question crosses a portion of Forest Service Tract 204. It is located 2.7 miles northeast of Ashers Fork, Kentucky, at latitude 37°02'45" N and longitude 83°36'11" W and is approximately 0.75 miles east of the junction of Jim Cove Hollow Road and Sand Hill Road. It is identified as Haulroad "A" in RWCC's application for a Federal surface coal mining permit (Federal permit application K061) which is on file in OSM's Knoxville Field Office.

OSM provided public notice of RWCC's request for VER and invited interested persons to participate in the proceedings with announcements published in the February 12, 1990, **Federal Register** (55 FR 4913) and in the

Manchester Enterprise. The public comment period closes on March 14, 1990.

In response to a request by the Kentucky Resources Council, Inc., OSM announced in the March 30, 1990, **Federal Register** (55 FR 12065) a reopening and extension of the public comment period for an additional 15 days. The extended comment period was closed on April 16, 1990.

OSM notified the USDA Forest Service on January 31, 1990, that it had received RWCC's request for VER and requested that the agency comment as to whether RWCC has VER and to provide factual information relevant to the request.

III. Applicable VER Standard

As stated in OSM's suspension notice of November 20, 1986 (51 FR 47146), OSM will approach each VER determination on a case by case basis, and will examine the particular circumstances which surround individual determinations. With respect to VER determinations on Federal lands, OSM will use the definition of VER in the approved state regulatory program. In states which have an all permits test, OSM will apply the test to include the good faith modification suggested by the district court in *In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, Mem. Op. at 20 (D.D.C. February 26, 1980).

On April 13, 1982, the Secretary of Interior conditionally approved the permanent program submission of the State of Kentucky. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404).

The term "valid existing rights" is defined in the Kentucky Administrative Regulations at 405 KAR 24:040. Section 4(2) of these rules states that VER for haulroads means:

> A recorded right-of-way, recorded easement, or a permit for coal haulroad recorded as of August 3, 1977; or any other road in existence as of August 3, 1977.

Kentucky regulations at 405 KAR 24:040, section 4(3), (4) further state that VER does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining and that interpretation of the terms of the documents relied upon to establish existing rights shall be based upon the laws of Kentucky.

IV. Application of Kentucky's VER Standard

OSM has determined that the appropriate criteria for VER with respect to RWCC's request is the standard for haulroads in the approved Kentucky regulatory program.

OSM applied this standard by examining all information submitted by RWCC, the USDA Forest Service and interested parties for evidence of a recorded right-of-way, recorded easement or a permit for a coal haulroad recorded as of August 3, 1977. No legal conveyance or permit of this type was found upon which to grant a request for VER. However, it is noted that the USDA Forest Service on March 9, 1990, issued a Special Use Permit (FLPMA Road Permit 753) to RWCC for Haulroad "A".

OSM applied a second test for VER by examining evidence which indicated whether the proposed haulroad followed the alignment of any road which was in existence as of August 3, 1977.

RWCC submitted 44 signed affidavits from local people who attested that they were familiar with the road referenced in RWCC's Federal surface coal mining permit application and that this road was in existence prior to August 3, 1977, and was previously used for coal-related activities. Based on a field investigation by OSM, together with the USDA Forest Service and RWCC, and information submitted by the interested parties, OSM has determined that a county road locally known as Rocky Fork Road terminates at Hoskin's cemetery, a small private burial plot. Proposed Haulroad "A" for which RWCC seeks VER begins at the cemetery and continues in a north-northwest direction past two abandoned house sites; the second of which is located on the private land on which mining is to be conducted. From the cemetery to the first abandoned house site, an existing road is well-defined. At that point the road takes two routes to the second abandoned house site.

The original roadway travels directly to the second house site and was used for many years until the late 1960's. At that time surface mining was conducted on Forest Service Tract 240, including the site of the original road. Thus, the site of the original road has been repeatedly and substantially disturbed, both by use as a road and by surface coal mining operations. A detour was created to the west of the original raodway, which thereafter served as the principle route to the second abandoned house site until recently. This detour is not an environmentally desirable route due to grade and drainage problems, which would require additional construction to address.

The USDA Forest Service has indicated that use of haulroad "A" is environmentally more desirable. Pursuant to a special use permit granted by the USDA Forest Service, the original roadway was recently restored to use and upgraded as a timber haulroad.

Based on the foregoing facts, OSM finds: (1) The detour road passes through areas having poor drainage, would be difficult to maintain, and its use would be more environmentally invasive or destructive than use of haulroad "A". The preamble to the Federal rule to which Kentucky's VER rule corresponds and which establishes the haulroad VER test stated that existing roads would have VER because use of existing roads would be less damaging to the environment than building new roads. (44 FR 14493 (1979)) This purpose of the VER rule is better served by granting VER for the original road "A". Haulroad "A" has already been substantially and repeatedly disturbed, and use of that road would not have undesirable drainage impacts. (2) Available information suggests that the alignment of haulroad "A" has historically served as a road; and that the second road may have been a detour intended for use until restoration of haulroad "A"; and that haulroad "A" was not permanently abandoned, but temporarily rerouted. This conclusion is reinforced by the fact that the U.S. Forest Service has agreed that a road did exist on the alignment of haulroad "A", and has approved restoration of haulroad "A".

Therefore, VER for a haulroad across Forest Service Tract 240 exists. Accordingly, RWCC is granted VER for Haulroad "A".

V. Appeals

Any person who is or may be adversely affected by this decision may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390 *et seq.* (1988). Notice of intent to appeal must be filed within 30 days from the date of publication of this notice of decision in a local newspaper in the area of the Daniel Boone National Forest.

Dated: May 29, 1990.

Harry M. Snyder,

Director.

[FR Doc. 90-12888 Filed 6-4-90; 8:45 am]

BILLING CODE 4310-05-M

Request for Determination of Valid Existing Rights Within the National Wild and Scenic River Study Corridor for the Allegheny River

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of request for determination and invitation for interested persons to participate.

SUMMARY: OSM has received a request for a determination that Rosebud Mining Company, (the requestor) has valid existing rights (VER) to mine specific coal reserves on privately-owned lands within a study corridor established for the Allegheny River under the Wild and Scenic Rivers Act (WSRA). Mining is prohibited within this corridor by the Pennsylvania program (hereinafter referred to as the Pennsylvania program) unless an applicant is deemed to have VER by the Director of OSM. By this notice, OSM is inviting persons to participate in the proceeding by submitting relevant factual information that will help render a decision on the VER determination. OSM intends to develop a complete administrative record of all information received in arriving at a final decision.

DATES: OSM will accept written materials on this request for a VER determination until 5:00 p.m. local time on July 20, 1990.

ADDESSES: Hand deliver or mail written materials to Carl C. Close, Assistant Director, Eastern Field Operations at the address listed below. Documents contained in the administrative record are available for public review at the locations listed below during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement Eastern Field Operations, Room 246, Ten Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2897.

Office of Surface Mining Reclamation and Enforcement Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

FOR FURTHER INFORMATION CONTACT: Charles Wolf (412) 937–2897.

SUPPLEMENTARY INFORMATION: Subject to VER, section 4.5(h) of the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA) prohibits surface coal mining operations in certain areas, except for those operations which existed on August 3, 1977. Under section 4.5(h)(1), the prohibition is applied on any lands within the boundaries of units of the Wild and Scenic Rivers System including study rivers designated under section 5(a) of WSRA (16 U.S.C. section 1271 *et seq.*). Public law 95–625, the National Parks and Recreation Act of 1978, amended the WSRA to include the Allegheny River from the Kinzua Dam to the town of East Brady as a section 5(a) study river. The United States Forest Service was designated as the lead agency for study of the Allegheny River.

On September 14, 1983 (48 FR 41312), OSM adopted a regulatory definition of VER at 30 CFR 761.5 which defined VER as those rights, which if affected by the prohibitions in section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), would entitle the owner to payment of just compensation under the Fifth and Fourteenth Amendments to the United States Constitution, the so-called "takings" test.

On March 22, 1985, the United States District Court for the District of Columbia held that the promulgation of the VER definition in 30 CFR 761.5 violated the Administrative Procedures Act and remanded the definition to the Secretary of the Interior (*in re: Permanent Surface Mining Regulation Litigation II* No. 79–1144).

In the November 20, 1986, Federal Register (51 FR 41952), OSM suspended the Federal definition of VER insofar as it incorporates a takings test. OSM announced that during the period of suspension it would make VER determinations on Federal lands and on non-Federal lands within the boundaries of areas identified at section 522(e)(1) of SMCRA using the VER definition contained in the appropriate state regulatory program.

The term VER is defined in the Pennsylvania program at title 25, Pennsylvania Code section 86.1. This section provides that VER includes, except for haulroads, those property rights in existence on August 3, 1977, that were created by a legally-binding conveyance, lease, deed, contract, or other document which authorizes the applicant to produce minerals by a surface mining operation; and provided further that the person proposing to conduct surface mining operations on such lands holds all current State and Federal permits necessary to conduct such operations on those lands and either held those permits on August 3, 1977, or had made by that date a complete application for the permits, variances, and approvals required by the Pennsylvania Department of Environmental Resources (DER).

By letter dated April 30, 1990, Rosebud Mining Company requested that OSM make a determination of VER to conduct underground coal mining operations on privately-owned lands within the study corridor established for the Allegheny River under the WSRA. Rosebud Mining Company alleges that on April 8, 1985, it applied to the Pennsylvania DER for a 15 acre permit to conduct underground mining operations in Perry Township, Armstrong County, Pennsylvania. The application was reviewed and permit 03851301 was issued by the Pennsylvania DER on October 17, 1988. No mining has occurred pending the outcome of this VER request.

The proposed mine, Rosebud Mine No. 2, is located between river mile marker 78 and 79, near the town of West Monterey. Approximately six acres of the permit area is within the one-quarter mile study corridor for the Allegheny River. Within these six acres, Rosebud is proposing to construct an access road, water treatment ponds, and part of an employee parking lot.

To establish that the requestor has VER for surface coal mining on the properties in question, OSM must determine that the requestor has demonstrated the right to mine the coal and did apply for the necessary permits prior to the time when the Allegheny River study corridor was designated as extending ¼ mile from each river bank.

OSM invites interested persons and government agencies to provide factual information as to whether the requestor has the property right to mine, held or made application for permits, and other factual information on whether the requestor has VER under the Pennsylvania standard. OSM will make a final decision on this VER request as soon as it is practicable following completion of the Administrative Record.

Dated: May 25, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–12889 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31602]

F.R. Orr—Control Exemption—Kankakee, Beaverville, and Southern Railroad Co., and Illiana Railroad Service, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the continuance in control of Kankakee, Beaverville, and Southern Railroad Company and Illiana Railroad Service,

Inc., by F.R. Orr, subject to standard labor protective conditions. The exemption is related to Finance Docket No. 31601, *Illiana Railroad Service. Inc.—Notice of Exemption.*

DATES: This exemption is effective on June 8, 1990. Petitions to reopen must be filed by June 25, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31602 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. and

(2) Petitioners' representative: Jill M. Hawken, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., 1350 New York Avenue, NW., Suite 800, Washington, DC 20005–4797, (202) 628–2000.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: May 29, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90–12938 Filed 6–4–90; 8:45]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

May 30, 1990.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information: (1) The title of the form/collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether Section 3504(h) of Public Law 96–511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 514–4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of Expiration Date of a Currently Approved Collection Without any Change in Substance or in Method of Collection

(1) Request for asylum in the United States.

(2) I–589. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This information is used to determine if an alien applying for asylum is classifiable as a refugee and eligible to remain in the U.S. Provided data minimizes need to reinterview applicants for asylum.

(5) 75,000 estimated annual responses at 1 hour per response.

(6) 75,000 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer.

[FR Doc. 90–12921 Filed 6–4–90; 8:45 am]

BILLING CODE 4410–10–M

Antitrust Division

National Cooperative Research Act of 1984; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center For Manufacturing Sciences, Inc. ("NCMS"), on April 27, 1990, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and describing the status of its research projects. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies recently were accepted as members of NCMS:

Claris Corporation
Crystallume, Inc.
Flow International Corporation
Grobet File Company of America, Inc.
Metcut Research Associates, Inc.
MSM Industries
Netrologic Incorporated
Thermwood Corporation

The following companies withdrew as members of NCMS:

Amphion, Inc.
Aircraft Engines Engineering Division
General Electric Company
Gearhart Industries, Inc.

Also, the names of several members have changed. Radian Corporation was purchased by Scientific Systems Services, Inc.; Taft-Peirce Manufacturing Company merged with Snow Manufacturing Company to become Snow Taft-Peirce Manufacturing Company; Flow Research, Inc. has become Quest Integrated, Inc.; and Sheffield Machine Tool Company has become Sheffield Schaudt Grinding Systems Incorporated.

Currently, NCMS has awarded contracts directed toward its objectives in the general areas of manufacturing data and factory control; manufacturing operations; manufacturing processes and materials; production equipment design, analysis, testing and control; and technology transfer. Other projects directed toward those objectives are under consideration.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the **Federal Register** on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, and January 29, 1990, notices of which the Department published on August 19, 1988 (53 FR

31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), and February 28, 1990 (55 FR 7045), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-12948 Filed 6-4-90; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Recording Industry Association of America, Inc.

Notice is hereby given that, on April 27, 1990, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("Act"), the Recording Industry Association of America, Inc. ("RIAA"), for itself and on behalf of its member companies, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the Protections of the Act limiting the recovery of antitrust Plaintiffs to actual damages under specified circumstances.

The following parties have been added as members of RIAA and have joined the venture, effective April 5, 1990: Estarion Lyrical Productions, Inc.; Incas Records; and Narada Productions, Inc. No other changes have been made in either the membership or planned activities of RIAA.

On March 27, 1989, RIAA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 1, 1989, 54 FR 18607. RIAA filed another notification disclosing changes in its membership on October 30, 1989, notice of which was published by the Department on December 8, 1989, 54 FR 50661.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-12949 Filed 6-04-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301 Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration.

Fiscal Year 1990 Employment Service Automation Funds Field Memorandum and Employment Service Program Letter.

One-time.

State or local governments.

20 respondents; 2,400 total hours; 120 hours per form.

Issues procedures for State Employment Service agencies to use when applying for ES automation funds and provide for appropriate review by ETA Regional Offices.

Signed at Washington, DC this 31st day of May 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-12985 Filed 6-4-90; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standard Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on June 20-21, 1990, in room S-2217 of the Frances Perkins Building, Department of Labor, Washington, DC. The meeting is open to the public and will begin at 9 a.m. on each day.

The agenda for this meeting includes reports on the following subjects: OSHA construction activities; the status of the Office of Construction and Engineering; the John Gray-Phillips 66 Study; Construction jobsite targeting; identifying high hazard companies; the status of the MSDS revision project; the status of the draft notice of proposed rulemaking which OSHA has developed in response to the U. S. Court of Appeals remand of the OSHA asbestos standard; unified construction compliance regulations; excavation safety awareness training; hazardous waste emergency response; variance procedures; trench safety; and construction written safety program. The Advisory Committee will also receive reports from the work groups covering cadmium, PELs for construction, the Bureau of Labor Statistics update, and CSHO construction training. In addition, the Advisory Committee will address the draft proposal to adopt updated

permissible exposure limits in a construction standard.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue NW., Washington, DC 20210, Telephone 202–523–8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 30th day of May, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90–12986 Filed 6–4–90; 8:45 am]

BILLING CODE 4510–26–M

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment Meeting

The Secretary's Committee on Veterans' Employment was established under section 308, title III, Public Law 97–306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment, Subcommittee on Veterans' Employment and Training Policy, will meet on Wednesday, June 27, 1990 at 1 p.m. in room S–2217 of the Department of Labor Frances Perkins Building.

Written comments are welcome and may be submitted by addressing them to: Robert L. Jones, Chairman, Subcommittee on Veterans' Employment and Training Policy, AMVETS National Headquarters, 4647 Forbes Boulevard, Lanham, MD 20706.

The primary item on the agenda is a preliminary discussion to outline strategies for development of a national veterans' training and employment policy.

The public is invited.

Signed at Washington, DC this 25th day of May, 1990.

Thomas E. Collins,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 90–12987 Filed 6–4–90; 8:45 am]

BILLING CODE 4510–79–M

LEGAL SERVICES CORPORATION

Request for Comments on a Grant Award to Single Parents United 'N Kids (SPUNK)

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces its intention to award a one-time, non-recurring grant of $32,000 to Single Parents United 'N Kids (SPUNK).

SUMMARY: The purpose for making this grant is to provide training and technical assistance in child support matters. These services will be provided to client eligible persons residing in or near Los Angeles County, California.

DATES: All comments and recommendations must be received by the Office of Field Services of LSC on or before June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, Associate Director, Legal Services Corporation, Office of Field Services, 400 Virginia Ave., SW., Washington, DC 20024–2751, (202) 863–1837.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national independent organization charged with implementing the federally funded system of legal services for low-income people. It hereby announces its intention to award a grant in the amount of $32,000 to SPUNK. The grantee will use this grant to provide training and technical assistance on child support matters to client eligible persons residing in or near Los Angeles County.

It is anticipated that the term of this grant will extend from July 1, 1990 to December 31, 1991.

Interested persons are invited to submit written comments and/or recommendations concerning the above to Charles T. Moses.

Dated: May 31, 1990.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 90–12933 Filed 5–31–90; 1:42 pm]

BILLING CODE 7050–01–M

Request for Comments on a Grant Award to SUPPORT

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces its intention to award a one-time, non-recurring grant of $15,000 in fiscal year 1990 to SUPPORT.

SUMMARY: The purpose for making this grant is to provide legal services in child support cases pending in the Allegheny County Family Division courts. These services will be provided to client eligible residents residing in or near Allegheny County, Pennsylvania.

DATES: All comments and recommendations must be received by the Office of Field Services of LSC on or before June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, Associate Director, Legal Services Corporation, Office of Field Services, 400 Virginia Ave., SW., Washington, DC 20024–2751, (202) 863–1837.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national independent organization charged with implementing the federally funded system of legal services for low-income people. The grantee will use this grant of $15,000 to finance the provision of legal services by law students and legal assistants supervised by a licensed attorney. The grantee will also use this grant to provide training and technical assistance on child support matters. These services will assist the client eligible population residing in or near Allegheny County, Pennsylvania, with child support matters.

It is anticipated that the twelve-month term of this grant will extend from July 1, 1990 to June 30, 1991.

Dated: May 31, 1990.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 90–12484 Filed 5–31–90; 1:42 am]

BILLING CODE 7050–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Independent Commission Meeting

Notice is hereby given that a meeting of the Independent Commission established by Public Law 101–121 will meet on June 6, 1990, from 10 a.m.–4 p.m. in the Lower Level Conference room of the Sears House, 633 Pennsylvania Avenue NW., Washington, DC.

This meeting will be open to the public on a space available basis. Items to be discussed are the review of the National Endowment for the Arts' grant

making procedures, including those of its panel system, and consideration of whether the standard for publicly funded art should be different than the standard of privately funded art.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 1, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–13113 Filed 6–4–90; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Expedited Clearance Request: NSF is requesting an expedited clearance of two week turn-around from OMB (See following questionnaire). Interested persons are invited to submit comments by June 12. Comments may be submitted to:

(1) *Agency Clearance Officer:* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335, and to;

(2) *OMB Desk Officer:* Office of Information and Regulatory Affairs, ATTN: Joe Lackey, Desk Officer, Paperwork Reduction Project (3145–0009), OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Higher Education Surveys, Survey #14, Survey of Retention Practices of Higher Education Institutions.

Affected Public: Non-profit institutions.

Responses/Burden Hours: 546 respondents; one hour per response.

Abstract: This and other HES are responsive to a variety of policy issues. Topics are not predetermined and survey instruments are designed specifically for each survey. This and other surveys serve program management needs, research objectives and general purposes not available through existing information sources.

Dated: May 30, 1990.

Herman G. Fleming,

NSF Clearance Officer.

BILLING CODE 7555–01–M

Higher Education Surveys

SURVEY #14
SURVEY ON RETENTION PRACTICES OF HIGHER EDUCATION INSTITUTIONS

June 1990

Dear Colleague:

I am writing on behalf of the U.S. Department of Education to request your participation in the Higher Education Survey (HES) on retention practices.

Attrition of college students has always been high, and recent evidence shows that the retention problem is worsening. The purpose of this survey is to provide a current picture of the performance of institutions in retaining their students, and to help in the development of strategies that may assist the higher education community to reduce dropouts. The completion of the questionnaire should take approximately 1 hour. Your participation in this survey, while voluntary, is vital to the development of reliable national estimates concerning retention strategies.

Because many institutions consider retention data to be highly sensitive, I wish to emphasize that your institution's responses will be kept strictly confidential, and that all information published from this survey will be in aggregated form only.

Thank you for your assistance.

Sincerely,

Alan Ginsburg
Director, Planning and Evaluation Service

Sponsored by the National Science Foundation, the National Endowment for the Humanities, and the Department of Education

NOTE: Please answer only for undergraduate students enrolled full-time at your institution. If your institution does not keep records on all of these items, please provide your best estimate.

1. For those students that leave your institution without completing a degree or award, how important are each of the following in their choice to leave?

	Very	Moderate	Little	Not at all
Academic interests of student better met elsewhere	☐	☐	☐	☐
Institutional social/cultural environment	☐	☐	☐	☐
Location of institution	☐	☐	☐	☐
Financial difficulties of student	☐	☐	☐	☐
Poor academic progress of student	☐	☐	☐	☐
Objectives of student have been accomplished	☐	☐	☐	☐
Other personal reasons of student	☐	☐	☐	☐
Other (please specify) _____	☐	☐	☐	☐

2. Please describe your institution's admissions policy.

☐ If you accept all students who apply (open admissions), check here and skip to question 3.
☐ If you have open admissions for some students (e.g., in-state students), check here and answer the remaining items for those students for whom you do not have open admissions.

(Check one on each line below.)

	Yes	No
We sometimes waive our admissions standards for certain students	☐	☐
We set admissions standards so that students who meet them can succeed academically	☐	☐
As a general policy, we consider non-academic factors (such as a student's "fit" with the institution) when deciding on admissions	☐	☐
We accept marginal students with the intention of providing the support that they need to continue	☐	☐
We try to increase retention through our admissions decisions	☐	☐

3. How recently has your institution performed each of the following to examine retention?

	In last year	In last 2 to 3 years	In last 4 to 5 years	Not in last 5 years
Compiled/examined institutional records	☐	☐	☐	☐
Conducted survey of students	☐	☐	☐	☐
Interviewed selected students (e.g., exit interviews)	☐	☐	☐	☐

4. Please indicate whether your institution has each of the programs listed below (whether or not the program is specifically directed towards influencing student retention). For those programs that you have, state the total number of staff (both full-time and part-time) assigned to the programs and the percentage of all full-time students who are involved at some point in their academic careers. Finally, evaluate the program in terms of its effect on influencing participating students to maintain their enrollment at your institution.

	Have program		Number of staff	Percent of students	Impact on retention for participating students		
	Yes	No			Great	Some	None
Admissions programs to improve student match with college (e.g., on-campus interviews, alumni recruiting)	☐	☐	____	____	☐	☐	☐
Testing/performance assessment to monitor students' progress or place them in courses (e.g., aptitude testing)	☐	☐	____	____	☐	☐	☐
Help for students with academic difficulties (e.g., remedial courses, academic advising, mentoring, identifying at-risk students, introductory summer program)	☐	☐	____	____	☐	☐	☐
Help for students with personal issues (e.g., personal counseling, child care)	☐	☐	____	____	☐	☐	☐
Help with student finances (e.g., on-campus employment, financial aid)	☐	☐	____	____	☐	☐	☐
Identification of students likely to leave	☐	☐	____	____	☐	☐	☐
Career guidance	☐	☐	____	____	☐	☐	☐

5a. Does your institution have a Federal Student Support Services Grant? (These grants are part of the Trio Program within Title IV, and are designed to provide aid to low-income, first-generation, and physically disabled students.)

Yes ☐
No ☐

5b. If so, what is the dollar amount of the grant?

Amount of grant $_____

5c. Which of the following services were at least partially funded through the grant, and how many students were affected by the grant for each service?

	Funded		Number of students
	Yes	No	
Academic, financial, or personal counseling	☐	☐	____
Assistance with enrollment and application processes to high school or college, or graduate/professional programs	☐	☐	____
Instruction/tutorial services	☐	☐	____
Career guidance/widen career options	☐	☐	____
Information for students or community on higher education opportunities	☐	☐	____

6. Please provide the following information about your institution's retention rates.

a. Entering full-time freshmen in Fall 1988 who were enrolled in Fall 1989

	Entered in Fall 1988	Still enrolled in Fall 1989
Total number	____	____
White, non-Hispanic	____	____
Black, non-Hispanic	____	____
Hispanic	____	____
Asian or Pacific Islander	____	____
American Indian or Alaskan Native	____	____
Non-resident alien	____	____

b. Entering full-time freshmen in Fall 1987 who completed associate degree program by 1989-90

☐ Check here if your institution does not offer an associate degree, and skip to question 6c.

	Entered in Fall 1987	Completed associate degree by 1989-90
Total number	____	____
White, non-Hispanic	____	____
Black, non-Hispanic	____	____
Hispanic	____	____
Asian or Pacific Islander	____	____
American Indian or Alaskan Native	____	____
Non-resident alien	____	____

c. Entering full-time freshmen in Fall 1984 who completed bachelor's degree by 1989-90

☐ Check here if your institution does not offer a bachelor's degree, and skip to question 7.

	Entered in Fall 1984	Completed bachelor's degree by 1989-90
Total number	____	____
Black, non-Hispanic	____	____
White, non-Hispanic	____	____
Hispanic	____	____
Asian or Pacific Islander	____	____
American Indian or Alaskan Native	____	____
Non-resident alien	____	____

7. On average, what percentage of all students who enter as full-time freshmen ultimately graduate from your institution?

Percentage who graduate ..... _____%

8. Of all students enrolled as full-time undergraduate students in Fall 1989, how many first entered as transfer students?

Total number	_____
White, non-Hispanic	_____
Black, non-Hispanic	_____
Hispanic	_____
Asian or Pacific Islander	_____
American Indian or Alaskan Native	_____
Non-resident alien	_____

9a. Please give the total number of **all** undergraduate students (not just freshmen) who were enrolled as full-time students in Fall 1988. Of those, how many completed a degree or award in 1988-89, and how many of the remaining students did not continue (i.e., were not enrolled at your institution in 1989-90)?

	Enrolled in 1988-89	Completed degree in 1988-89	Did not continue
Total number	_____	_____	_____
White, non-Hispanic	_____	_____	_____
Black, non-Hispanic	_____	_____	_____
Hispanic	_____	_____	_____
Asian or Pacific Islander	_____	_____	_____
American Indian or Alaskan Native	_____	_____	_____
Non-resident alien	_____	_____	_____

9b. *Of those that you listed above as not continuing after 1988-89*, please state the percentage in each of the categories below. If a student might fit within more than one category, please choose the category that best explains the student's reason for not being enrolled in 1989-90. Please give your best estimate if you do not have exact data, but place those students for whom you have no good information under "other/no information available."

Transferred to another institution	_____
Temporary interruption	_____
Left education	_____
Other/no information available	_____
Total	100%

10a. Over the last five years, has your institution adopted any new programs or substantially modified existing programs specifically to increase retention?

Yes ☐
No ☐

10b. If yes, what areas are involved?

	Yes	No
Admissions programs	☐	☐
Testing/performance assessment to monitor students' progress or place them in courses	☐	☐
Help for students with academic difficulties	☐	☐
Help for students with personal issues	☐	☐
Help with student finances	☐	☐
Identification of students likely to leave	☐	☐
Career guidance	☐	☐

10c. What changes do you anticipate in the retention rate at your institution over the next five years?

A decrease of at least 10 percent in the number who leave without completing a degree or award ☐
No change, or a change of less than 10 percent ☐
An increase of at least 10 percent in the number who leave without completing a degree or award ☐

11. Please provide the following information about your admissions of full-time first-time freshmen for the 1988-89 academic year.

Number who applied for admission _____

Number of those accepted for admission _____

Number who enrolled _____

12. Please provide the following information about your full-time freshmen in Fall 1989.

a. For what percentage of entering freshmen do you have SAT scores? _____%

Average (mean) SAT score of entering freshmen
Verbal _____
Mathematics _____

b. For what percentage of entering freshmen do you have ACT scores? _____%

Average (mean) composite ACT score of entering freshmen _____

c. Percentage of entering freshmen in top 25% of high school class _____%

d. Mean high school grade point average of entering freshmen _____

On a scale from _____ to _____

13. Please provide the following information about all of your full-time students in Fall 1989.

a. Total number of full-time students ..... _____

b. Race/ethnicity
- White, non-Hispanic ..... _____
- Black, non-Hispanic ..... _____
- Hispanic ..... _____
- Asian or Pacific Islander ..... _____
- American Indian or Alaskan Native ..... _____
- Non-resident alien ..... _____

c. Gender
- Male ..... _____
- Female ..... _____

d. Percentage of students receiving Pell Grants ..... _____%

e. Percentage of students receiving institutional aid ..... _____%

f. Percentage of students living on campus ..... _____%

g. Percentage of all students who are enrolled full-time ..... _____%

14. Please provide the following information about your institution.

a. Location of campus
- Urban ..... ☐
- Suburban ..... ☐
- Rural ..... ☐

b. Percentage of undergraduates who later attend graduate or professional school ..... _____%

Thank you for your assistance.
Please return this form by June 29 to:

Higher Education Surveys
WESTAT
1650 Research Boulevard
Rockville, MD 20850

Please keep a copy of this survey for your records. Person completing this form:

Name_____

Title_____

Telephone (___)_____

If you have any questions or problems concerning this survey, please call Bradford Chaney at (800) 937-8281 (toll-free).

[FR Doc. 90-12877 Filed 6-4-90; 8:45 am]
BILLING CODE 7555-01-C

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-344]

Portland General Electric Co., the City of Eugene, OR, Trojan Nuclear Plant; Environmental Assessment and Findings of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 50, appendix J, section III.D.2.b(i) for the containment airlock door equalizing valves of the Trojan Nuclear Plant. The Portland General Electric Company (PGE, the licensee) is the licensee for the Trojan Plant, located in Columbia County, Oregon.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements to perform containment leak testing for 10 CFR part 50, appendix J, section III.D.2.b(i) for the containment airlock inner door equalizing valves. By letter dated April 18, 1990, the licensee requested an exemption from the requirements of 10 CFR part 50, appendix J, section III.D.2.b(i) for the containment airlock inner door equalizing valves.

The Need for the Proposed Action:

The requirements of 10 CFR part 50, appendix J, section III.D.2.b(i) make no provision for alternative methodology for testing airlocks at an interval pressure of less than Pa, as defined in appendix J. However, all parts of the equipment, notably the inboard door equalizing valves, cannot be tested at pressure Pa in the airlock because it is designed (properly) to withstand pressure Pa in the opposite direction, which is the direction in which the design basis accident exerts design basis accident force on the valve. Accordingly, the licensee has requested an exemption from that part of 10 CFR part 50, appendix J which requires airlock testing of the containment airlock inner door equalizer valve at a pressure not less than Pa, since the valve is not designed (nor would it be called on in a design basis accident) to withstand a pressure of Pa in the direction associated with airlock testing. Since the valve cannot, by design, withstand the required pressure of Pa in the required airlock test, the licensee has a need for an exemption from a testing requirement that cannot by design meet the regulatory requirement.

Environmental Impact of the Proposed Action

The proposed exemption affects only the method by which the equalizer valves in the containment airlock inner doors are tested to determine the rate of seal leakage associated with the valves. The proposed action does not affect the risk of facility accidents and could not reasonably have any significant environmental impact. The post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents, or any significant occupational exposures. With regard to potential non-radiological effluents, the proposed exemption does not affect plant non-radiological effluents and has no other adverse environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since we have concluded there are no significant environmental impacts for the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. Such an action would not reduce environmental impacts of the plant operation.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Trojan Nuclear Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the licensee's submittal dated April 18, 1990, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the Trojan Nuclear Plant at the Branford P. Millar Library; Portland State University; Portland, Oregon 97207.

Dated at Rockville, Maryland, this 31st day of May 1990.

For the Nuclear Regulatory Commission.

John T. Larkins,

Acting Director, Project Directorate V, Division of Reactor Project—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-12946 Filed 6-4-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-23, issued to Carolina Power & Light Company (the licensee), for operation of the H. B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

The amendment would change Technical Specification (TS) Table 4.1-1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels," by adding a note to Item 27, "Logic Channel Testing," correcting a typographical error and renumbering a subsequent note. The present TS, Item 3, "Nuclear Source Range," requires the nuclear source range instrument to be tested prior to each reactor startup if not performed in the previous seven days. The present TS, Item 27, requires the logic portion of all 25 instruments in Table 4.1-1, including the nuclear source range instrument, to be tested monthly. However, the nuclear source range instrument is not required to be used during power operation and cannot be tested during power operation. A note would be added to Item 27 of Table 4.1-1 stating that logic channel testing for the nuclear source range instrument would only be required prior to each reactor startup if not performed within the previous seven days. This will make Item 27 consistent with the need for the source range instrument and Item 3 of Table 4.1-1.

An exigent TS change is needed in order to comply with the present interpretation of the TS which was determined on May 16, 1990. The source range logic surveillance test was last performed during a plant shutdown on May 19, 1990, and the next test will be required by June 18, 1990. If the allowed TS tolerance on surveillance interval period is used, the next test will be

required by June 25, 1990. Exigent handling of the license amendment is needed to avoid shutting the facility down to test the source range logic.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company has reviewed the proposed TS change in accordance with the standards set forth in 10 CFR 50.92 and has determined that this change does not constitute a significant hazards consideration for the following reasons:

1. Operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously analyzed because previously evaluated accidents, as found in chapter 15 of the UFSAR, do not discuss nor take credit for the source trip feature. Also, the proposed amendment does not introduce any new evolution or test, and cannot increase the probability or consequences of occurrence of any accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment is administrative and does not create any new tests, evolutions, or requirements. The amendment clarifies existing logic channel testing requirements and provides consistency with existing requirements for testing of nuclear source range channels. The source range instrument is deenergized during power operations, and no credit for the source range trip feature is taken in the USFAR accident analysis. Therefore, this amendment will not create the possibility of a new kind of accident from any accident previously evaluated. The affected components will be available and will be verified operable prior to being required for service consistent with the intent of the Technical Specification prior to the proposed amendment. Therefore, this amendment does not create the possibility of a different kind of accident from any accident previously evaluated.

3. Operation of the facility, in accordance with the proposed amendment, would not involve a significant reduction in a margin of safety. The source range channel testing requirements will be made consistent by this amendment. These channels, including the logic channel portions, will be tested and verified operable prior to being required for service. The proposed amendment is administrative in nature and does not involve a safety-significant change to the Technical Specifications. Therefore, this amendment will not affect the margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 20, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document room located at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petition's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The

contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make if effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take the action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, *Attention:* Docketing and Services Branch, or may be delivered to the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 25, 1990, which is available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document room, Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Rockville, Maryland, this 31st day of May 1990.

For the Nuclear Regulatory Commission.

Lester L. Kintner,

Acting Director, Project Directorate II–1, Division of Rector Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–13096 Filed 6–4–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation (GPU, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment would revise the Technical Specifications as follows:

1. Technical Specification Table 4.1.1 Item 15, would be revised to extend the High Radiation on Air Ejector Off-Gas instrument channel calibration and test from each refueling outage to once per 24 months.

2. Technical Specification Table 4.1.1 Items 28.a and 28.b would be revised to extend the 4.16 KV Emergency Bus Undervoltage (Loss of Voltage and Degraded Voltage) instrument channel calibrations from once per 18 months to once per 24 months.

3. Technical Specification Table 4.1.1 Legend would also be revised to include the designation: ½₄ mo. = Once every 24 months.

4. Technical Specification Section 4.2.E.3 would be revised to extend the Standby Liquid Control System Functional Test from each refueling outage to once every 24 months.

5. Technical Specification Section 4.5.E would be revised to extend the Type "B" and "C" Local Leak Rate Tests (LLRT) from each refueling outage to an interval not to exceed 24 months.

6. Technical Specification Section 4.5.J.4.b would be revised to extend the Reactor Building to Suppression Chamber Vacuum Breakers test and instrument calibration from each refueling outage to once every 24 months.

7. Technical Specification Section 4.5.J.5.b (1), (2), and (3) would be revised to extend the Suppression Chamber-Drywell Vacuum Breakers test, position indication and alarms calibration and test, and inspections from Refueling Outage tests to Once Every 24 Months.

8. Technical Specification Section 4.5.J.5.b (4) would be clarified to specify that the Drywell to Suppression Chamber leak rate test shall be performed each refueling outage (interval not to exceed 20 months), as presently required.

9. Technical Specification 4.5.Q.1.a would be revised to extend the subsequent visual inspection period from 18 months to 24 months when zero inoperable snubbers are detected per inspection period. Technical Specification Section 4.5.Q.1.c would be revised to extend the functional test of 10% of each type of snubber in the plant from each refueling cycle to every 24 months. Technical Specification Section 4.5.Q.1.f would be revised to extend the review of installation and maintenance records from 18 months to 24 months.

10. Technical Specification Section 4.7.A.2 would be revised to extend the

emergency diesel generator automatic and functional test from each refueling outage to once every 24 months. Technical Specification Section 4.7.A.3 is revised to extend the diesel generator inspection from once per 18 months to once per 24 months.

11. Technical Specification Section 6.15, Subsection (2) is revised to extend performance of system leak tests for the Core Spray, Containment Spray, Reactor Water Cleanup, Isolation Condenser, and Shutdown Cooling Systems from refueling cycle intervals to a frequency of once every 24 months.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 5, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing, Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw Pittman, Potts and Trowbridge, 200 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 4, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 30th day of May 1990.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

Note: This signature page is affixed to the document for GPU Nuclear Corporation, Docket No. 50-219, Notice of Consideration of Issuance of Amendment to Provisional

Operating License and Opportunity for Hearing (DPR–16)

[FR Doc. 90–12944 Filed 6–4–90; 8:45 am]
BILLING CODE 7590–01–M

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Issuance Amendment to Facility Operating License

[Docket No. 50–219]

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 139 to Provisional Operating License No. DPR–16 issued to GPU Nuclear Corporation, et al., which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment revises Technical Specifications 3.17 and 4.17. Specifically, the changes are as follows: (1) Two control room HVAC System shall be operable during all modes of operation, (2) addition of new limiting conditions for operation for the control room and (3) delete surveillance to determine the makeup air plus infiltration air (less than or equal to 2000 cfm) to the control room envelope for each control room HVAC system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on November 22, 1989 (54 FR 48339). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated October 18, 1989, supplemented February 21, 1990, (2) Amendment No. 139 to License No. DPR–16, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland this 29th day of May, 1990.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–12947 Filed 6–4–90; 8:45 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–28063; File No. SR–CBOE–89–24]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Trading Appointments of Market Makers

On December 5, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change to increase the number of trading stations on the Exchange trading floor which may be included within a market maker's appointment.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27566 (December 26, 1989), 56 FR 681 (January 8, 1990). No comments were received on the proposed rule change.[3]

The Exchange proposes to amend paragraph (c) of CBOE rule 8.3 to increase from three to five the maximum number of trading stations on the Exchange trading floor which may be included within a market maker's appointment. In addition, the proposal amends Interpretation and Policies .01 of rule 8.3 to state that the Exchange has adopted the policy that no market maker may act as an independent market maker in a class of options for which the market maker has been approved to act as a DPM.

The Exchange believes that the proposed rule will provide better and more liquid markets on the floor and clarify the classes of options in which market makers may act as independent market makers. Several years ago, the Exchange lowered the maximum allowable classes for an appointment from thirty classes to three trading stations or approximately twelve classes. The three station criteria has proven to be too restrictive in the current market environment. By going to five stations or approximately 20 options (8.3% of the options traded on the CBOE), the Exchange believes that it will improve liquidity in the markets by allowing capital and market makers to move quickly to stations where extreme activity is occurring.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6. Specifically, the Commission finds that increasing the number of trading stations which may be included in a market maker's appointment is consistent with section 6(b)(5) in that it will perfect the mechanism of a free and open market by increasing the depth and liquidity of CBOE options markets. In particular, the Commission believes that increasing the number of trading stations which may be included in a market maker's appointment from three to five will help to ensure that there is adequate market maker participation in each class of options traded on the Exchange and that public customers receive timely execution of their orders. By allowing market maker appointments to extend to five trading stations, market makers will be able to trade approximately eight

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] The proposal was amended on December 22, 1989, to state that the Exchange has adopted the policy that no market maker may act as an independent market maker in a class of options for which the market maker has been approved to act as a Designated Primary Market Maker ("DPM").

[4] There are approximately 45–50 trading stations on the CBOE. The number of trading stations changes due to, among other things, delisting and the redistribution of options classes on the CBOE floor. Conversation between Bob Ackerman, Vice President, Legal Services, CBOE, and Thomas Gira, Branch Chief, Options Regulation, on May 18, 1990.

more options without having to limit their market making activity, which is beneficial to the market place and investors, due to the requirement imposed by Interpretation and Policies .03 to CBOE rule 8.7 that market makers must execute 75% of their total contract volume in options classes to which they are appointed.

At the same time, the number of appointed options for a market maker is not so large as to negate the purpose behind the market makers' "zone requirements." These requirements are intended to require that market makers concentrate on a limited group of options that include both active and inactive options. This helps to ensure adequate liquidity for inactive options and adequate market maker presence at all trading posts. By increasing from three to five posts out of a possible 45 posts on the trading floor the number of posts appointed to a market maker, the proposed rule change does not jeopardize the effectiveness of the zone requirements.

The Commission also finds that prohibiting a market maker from acting as an independent market maker in a class of options for which the market maker has been approved to act as a DPM is consistent with section 6(b)(5) in that it will promote just and equitable principles of trade and protect the public interest by ensuring that a DPM will be subject to the requirements applicable to a DPM in classes of options for which he has been approved to act as a DPM.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR–CBOE–89–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: May 29, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–12992 Filed 6–4–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28064; File No. SR–CSE–90–09]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Notice of Filing and Order Granting Partial Temporary Accelerated Approval of Proposed Rule Change Relating to Exposure Time of Agency Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 1990, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The proposal would permanently adopt an amendment to its rule 11.9(o) that reduces from 30 seconds to 15 seconds the exposure period during which agency orders are exposed to Approved Dealers.[3] On May 23, 1990, the Commission received a letter amendment from the CSE requesting a six-month renewal of its expired pilot program to allow the Exchange and the Commission additional time to evaluate the effectiveness of the reduced "flash" time.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to implement a six-month pilot program and to amend rule 11.9(o) in order to reduce the exposure period after an agency order has interacted with the CSE book from thirty seconds to fifteen seconds.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In file number SR–CSE–88–03, the Exchange requested and received Commission approval to reduce, on a pilot basis, the processing period for public and professional agency orders by lowering the exposure period from thirty seconds to fifteen seconds.[5] Based upon the success of the pilot, the Exchange now requests that the Commission permanently approve the proposed change to CSE Rule 11.9(o) and implement the pilot for an additional six months while the Exchange and the Commission evaluate the pilot's effectiveness.

The proposed rule change was based upon the Commission's recognition of the sensitive balance between a customer's need to receive the best possible execution price and his or her need for timely execution,[6] and similar reductions in overall processing times adopted by the Midwest Stock Exchange and Pacific Stock Exchange.[7]

The Exchange states that the application of the fifteen second flash requirement has been found to be an adequate time period for approved dealers to respond to the interest being "flashed" in the second exposure period and has lessened the instances of executions which trade-through other ITS participants. Furthermore, the Exchange believes the proposed change has served to equalize the total CSE processing time with other exchanges, thereby removing the competitive disadvantage to CSE members and giving them the ability to better meet their fiduciary obligation to obtain the best execution for their customers. As an automated exchange, no specific order exposure period is needed for price improvement since market-makers must always display the best quotes at which they are willing to trade.

The Exchange further believes the proposed rule as amended, is consistent

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[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30–3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] On the CSE, orders are executed automatically through its National Securities Trading System ("NSTS"). The NSTS is a fully automated, electronic trading system that permits CSE members to enter agency or principal orders into the system through remote terminals. Once entered, orders are stored, queued, and executed by the system according to price/time and agency/principal priorities. Market making support for securities traded in the NSTS is provided by competitive market makers. In addition, each security traded in the system has an assigned designated dealer who is responsible, among other things, for the automatic execution of public agency market orders and marketable limit orders of up to 2,099 shares at the Intermarket Trading System ("ITS") best bid and offer.

Upon entry into the system, a public agency market order is priced at the ITS best bid or offer and exposed to the CSE market by executing it against any matching contra interest in the system's central limit order book. The remainder is then automatically executed against the designated dealer for up to 2,099 shares, and any balance is further exposed to all approved dealers for execution via a "flash" on NSTS terminals for 15 seconds. Finally, any unexecuted remainder is reformatted into an ITS commitment and transmitted to whichever ITS participant is displaying the best bid or offer. With the exception that it does not receive a guaranteed execution against the designated dealer, a professional agency market order is processed in the same manner. *See* File No. SR–CSE–88–03.

[4] *See* letter from Craig R. Carberry, Vice President-Market Regulation, CSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated May 23, 1990.

[5] *See* Securities Exchange Act 25955 (August 1, 1988), 53 FR 29537 (August 5, 1988) (order approving File No. SR–CSE–88–03). The original six month pilot expired February 1, 1989.

[6] *See, e.g.,* Securities Exchange Act Release No. 20074 (August 12, 1983), 28 SEC Docket 938, 940 (August 30, 1983) (deferral of proposed Commission order exposure rule).

[7] See Securities Exchange Act Release No. 27727 (February 22, 1990), 55 FR 7396 (March 1, 1990) (order approving File Nos. SR–MSE–86–09 and SR–PSE–87–12).

with, and furthers the purposes of, those provisions of sections 6(b)(5) and 11A of the Act [8] which provide for fair competition among market centers and the perfection of the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not solicit comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-90-09 and should be submitted by June 26, 1990.

IV. Conclusion

The Commission finds that the proposal to renew the pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act [9] and the rules and regulations thereunder. In this regard, we note that the renewal of the pilot furthers the protection of investors and the public interest because it allows for the pilot program to operate while the Commission considers the Exchange's request for permanent approval. During the renewed pilot period, the Commission will continue to examine whether a reduced exposure time affords agency orders a sufficient opportunity for price betterment. To aid in that examination, the Commission expects the CSE to submit a report detailing its experience under the renewed pilot program to the Commission by September 1, 1990.[10]

The Commission finds good cause for approving the proposed renewal of the pilot prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes it is necessary to renew the pilot program's operation so as to afford both the Exchange and the Commission a further opportunity to evaluate the pilot's operation. The Commission believes, therefore, that accelerated effectiveness of the renewal of the pilot program for an additional six-month term is appropriate.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act [11] that the portion of the proposed rule change (SR-CSE-90-05) that proposes to renew the 15-second order exposure pilot be, and hereby is, approved for a six-month period ending on November 29, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: May 29, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-12993 Filed 6-4-90; 8:45 am]

BILLING CODE 8010-01-M

[8] 15 U.S.C. §§ 78f(b)(5) and 78k-1 (1982).

[9] 15 U.S.C. § 78s (1982).

[10] In this connection, the Division would like the Exchange to submit information on the following: (1) the number of orders where the execution price was better than the existing consolidated best bid or offer at the time of order entry over a one-week period; (2) the relative reduction, if any, in executions that trade-through other ITS participants resulting from using the 15 second "flash" time as opposed to 30 seconds; and (3) a comparative analysis of the extent to which the CSE's reduced processing time resulting from the 15 second order exposure period equalizes the order processing time of other exchanges and the extent to which such an equalization results in a better execution on the CSE.

[11] 15 U.S.C. § 78s(b)(2) (1982).

[12] 17 CFR § 200.30-3 (1989).

[Release No. 34-28065; File No. SR-NASD-89-45]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Expedited Remedial Proceedings Under the Code of Procedure

The National Association of Securities Dealers, Inc. ("NASD") submitted on October 5, 1989, to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder.[2] The proposal amends the NASD Code of Procedure [3] to add a new procedure by which the NASD could take appropriate remedial action against an NASD member or an associated person if the member or person had engaged and there was a reasonable likelihood that the member or person would again engage in securities law violations.

The NASD proposed this rule change because it has been confronted on several occasions with instances of members and persons that have violated various Commission and NASD rules and regulations and when advised by the NASD to cease such activities, have evidenced an intent to continue and have continued violative conduct. The NASD, under the present Code of Procedure, has no expeditious method specifically designed to handle such situations.

It is the intention of the NASD to use the expedited process in a limited manner, and only in circumstances involving clear violations of applicable law or rules.[4] Only the NASD Executive Committee may initiate an expedited proceeding, and only after finding that the proceeding was needed to protect the public interest. Furthermore, the proposal provides for an appeal process to the NASD Board of Governors by any party aggrieved by a decision, with specific timetables for hearing and review.

Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 27502, December 5, 1989) and by publication in the Federal Register (54 FR 51098, December 12, 1989). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A [5] and the rules and regulations thereunder.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] *NASD MANUAL*, paragraphs 3001 *et. seq.*

[4] *See* letter of T. Grant Callery, Vice President and Deputy General Counsel, NASD to Katherine England, Branch, Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated January 19, 1990.

[5] 15 U.S.C. 78o-3 (1982).

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[5]

Dated: May 29, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-12994 Filed 6-4-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28068; File No. SR-PSE-90-18]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Trading of Warrants on the CAC 40 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 2, 1990, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to list and trade warrants based on the CAC 40 Index ("Index").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

[5] 17 CFR 200.30-3(a)(12).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Index is an internationally recognized capitalization-weighted index consisting of 40 highly capitalized and actively traded stocks on the Monthly Settlement Market of the Paris Bourse (Reglement Mensuel or "RM"). The Index is calculated and disseminated by the Societe des Bourses Francaises.

Such warrant issues will conform to PSE listing guidelines as proposed in proposed rule filing SR-PSE-90-11.[1] The proposed guidelines provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements specified in PSE listing requirements; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

The Index warrants will be direct obligations of their issuer subject to cash settlement during their term, and either exercisable throughout their life (*i.e.,* American style) or exercisable only on their expiration date (*i.e.,* European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a put option would receive payment in U.S. dollars to the extent that the Index has declined below a prestated cash-settlement value. Conversely, holders of a warrant structured as a call option would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash-settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

In SR-PSE-90-11, the PSE proposed suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. The proposed amendment to Exchange Rule X, section 18(c), will make the options suitability standards applicable to recommendations regarding index warrants. The Exchange also recommends that index warrants be sold only to options-approved accounts. The proposed amendment to Exchange Rule X, section 18(e)(1), will require a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day the order is entered. In addition, the PSE, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

The PSE believes that there will be an adequate mechanism for the obtaining of surveillance information with respect to the Index's component stocks. The PSE is in the process of ensuring that surveillance information will be shared between the PSE and the exchange on which the Index's component stocks are traded.

The PSE believes that the proposed rule change is consistent with the requirements of the Act, and in particular, Section 6(b)(5), as the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

[1] As of the date of this release, SR-PSE-90-11 has not been approved by the Commission. Approval of SR-PSE-90-11 must occur before approval of the proposal to list warrants based on the Index.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: May 29, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-12995 Filed 6-4-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25098]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 25, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 18, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company, et al. (70-7508)

Consolidated Natural Gas Company ("CNG"), a registered holding company, and its subsidiary, CNG Financial Services, Inc. ("Financial"), both located at CNG Tower, Pittsburgh, Pennsylvania 15222-3199 have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 86, 87 and 90 thereunder.

By prior Commission order, CNG was authorized, among other things, to form Financial to engage in passive leveraged lease transactions (HCAR No. 24805, January 12, 1989). CNG now proposes that Financial be authorized to engage in the financing of gas utilizing equipment ("Equipment").

Authorization is also sought for Financial to provide financing to CNG system's customers who need assistance in obtaining the Equipment, by providing (i) short-term loans, (ii) long-term loans, or (iii) sale and lease-back or other financing arrangements whereby Financial would take title or a security interest in the Equipment. Financial will not act as a representative or agent of any manufacturer or supplier of Equipment.

It is proposed that single investor sales and lease-back of Equipment by Financial could be of two types, either a financing arrangement that is classified not as a true lease, or a financing arrangement that is a true lease, where the owner of the Equipment for both financial accounting and tax accounting purposes is, in the first instance, the lessee or, in the second case, the lessor who would be entitled to depreciation deductions.

Financial's services will be made available to creditworthy customers who seek to purchase gas or transportation from the CNG system. It is proposed that customers of the CNG system include end-users served by (i) associate local distribution companies ("LDCs"), (ii) non-associate LDCs served by associate pipelines and (iii) non-associate pipelines receiving gas or transportation from associate pipelines. Such LDCs and pipelines are referred to hereafter as "System Companies". It is proposed that Equipment will be financed primarily in the service territories of CNG's LDCs and transmission companies. Additionally, Financial seeks to finance Equipment outside such traditional service areas. It is stated that for each three-year period, total financing revenues received by Financial from non-System companies will be less than that received by Financial from System Companies.

Financial further proposes, from time to time, through June 30, 1993, to obtain necessary funding from CNG for Equipment financing through: (a) The sale of Financial common stock, $10,000 par value; (b) open account advances ("Advances"); (c) credit agreement loans ("Credit Loans"); or (d) long-term loans, in any combination of the foregoing and in such amounts that the aggregate outstanding amount so obtained from CNG for financing Equipment and leveraged leasing will not at any time exceed $100 million. Financial also proposes, from time to time, through June 30, 1993, to purchase from CNG shares of Financial's common stock, $10,000 par value, hold such acquired shares as treasury shares, and resell such shares to CNG.

The Advances, Credit Loans and long-term loans will have the same effective terms and interest rates as related borrowings of CNG. Advances made to Financial will bear the same interest rate as open account advances made to participants in the CNG System Money Pool (HCAR No. 24218, June 12, 1986). If there are no corresponding outstanding loans of CNG, such borrowings by Financial would carry the following interest rates: (1) Advances—the federal funds' effective rate as quoted daily by the Federal Reserve Bank of New York; (2) Credit Loans—the prime commercial rate in effect from time to time at the Chase Manhattan Bank, N.A.; and (3) long-term loans—the indicative rate for comparable debt issuances published in Salomon Brothers Inc. Bond Market Roundup dated nearest to the time of takedown.

The southern company (70-7515)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia, a registered holding company, has filed a posteffective amendnent to its declaration pursuant to section 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By prior commission. order in this matter (HCAR No. 24652, May 26, 1988), Southern was authorized, from time to time through June 30, 1990, to issue and sell, pursuant to an exception from competitive bidding, up to 50,000 shares of its common stock, par value $5.00 per share, pursuant to an employee Profit

[2] 17 CFR 200.30-3(a)(12) (1989).

Sharing Plan for Electric City Merchandise Company, Inc. Electric City Merchandise Company, Inc. is a subsidiary of Mississippi Power Company, an electric utility subsidiary of Southern. Southern now request that such authority, including the exception from competitive bidding, be extended through June 30, 1992.

Central and South West Services, Inc. (70–7671)

Central and South West Services, Inc. ("CSWS"), 2121 San Jacinto Street, Dallas, Texas 75201, a subsidiary company of Central and South West Corporation ("CSW"), a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

CSWS proposes to license and sell to nonassociate entities, from time-to-time, through December 31, 1992, specialized computer programs, which were developed in connection with its services to CSW and its operating companies, in order to offset development and modification costs of such programs. Such programs include specially developed software programs for the analysis of financial data, including accounting, tax and utility rate matters and specialized modifications to software developed by third parties for particular applications. CSWS also proposes to provide certain support services to licensees and purchasers of its software, such as program enhancements, training and problem resolution.

Additionally, CSWS proposes to sell, from time-to-time, through December 31, 1992, no more than 35% of its computer capacity to third parties. Currently, CSWS provides computer capacity to one local community college as a donated service. In the future, the community college may wish to purchase additional capacity beyond that which is currently being donated, or other companies or organizations may be able to utilize CSWS's reserve capacity.

CSWS will not add equipment or personnel for the purpose of licensing and/or selling software. Furthermore, CSWS will not make expenditures in excess of $100,000 in any calendar year to develop or change software or market such software or reserve computer capacity.

GPU Service Corporation, et al. (70–7675)

GPU Service Corporation ("GPUSC"), 100 Interpace Parkway, Parsippany, New Jersey 07054, Jersey Central Power & Light Company, Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company, 2800 Pottsville Pike, Reading, Pennsylvania 19605, Pennsylvania Electric Company, 1001 Broad Street, Johnstown, Pennsylvania 15907, and GPU Nuclear Corporation, One Upper Pond Road, Parsippany, New Jersey 07054 (collectively, "GPU Companies"), wholly owned subsidiaries of General Public Utilities Corporation, a registered holding company, have filed an application under Sections 9(a) and 10 of the Act.

The GPU Companies propose to grant, from time-to-time through December 31, 2000, to non-affiliate companies, nonexclusive licenses to use a series of computer programs created for the use of GPU system companies in their respective capacities as public-utility and service companies, as well as programs to be designed in the future ("Programs"), for a consideration to be negotiated with the prospective licensees. In addition, the GPU Companies propose to provide initial training in the use of the Programs for each licensee, and to respond to licensees' inquiries for additional advice and information with respect thereto.

The GPU Companies anticipate that their total investment of capital or employees' time expended, and total annual revenues derived, in connection with the licensing process through December 31, 1992, Will not exceed $500,000 and $l million, respectively.

New England Electric System (70–7746)

New England Electric System ("NEES"), a registered holding company, and its wholly owned subsidiary company, NEES Energy, Inc. ("NEES Energy"), both at 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration pursuant to sections 12(b), I2(c), 12(d), and 12(g) of the Act and Rules 42(a), 43(a), 44(a) and 45(a) thereunder.

NEES proposes to: (1) Transfer its interest in NEES Energy to Northeast Energy Management, Inc. ("NOREMCO"), a newly formed corporation that is wholly. owned by the current president of NEES Energy, Mr. George P. Sakellaris, through an agreement and plan of merger, for an exchange price of approximately $12.4 million; (2) convert up to $12 million of subordinated loans made to NEES Energy into capital investment prior to the closing of the merger; (3) invest approximately $4.875 million in NEES Energy, before the closing of the merger, to be used directly to pay off the outstanding balance on the Revolving Credit/Term Loan Agreement between NEES Energy and the Bank of Nova Scotia; and (4) make other recoverable interim investments, not to exceed $500,000, in NEES Energy, as is necessary to operate the company pending the merger.

Through the merger transaction, NEES will transfer its stock certificates in NEES Energy to NOREMCO in exchange for cash, and NEES Energy will be merged into NOREMCO, which will be the surviving company. The exchange price will be adjusted upwards for every dollar invested in or loaned to NEES Energy by NEES before the closing and, will likewise be adjusted downward for every dollar paid by NEES Energy to NEES or the Bank of Nova Scotia before the closing. However, NEES expects to incur an after-tax loss of; approximately $2.5 million as a result of the transaction, and under the Merger Agreement, NEES agrees to indemnify NOREMCO against any claims relating to the business of NEES Energy before the closing, up to an aggregate of $1.25 million.

Additionally, in the case that the merger does not occur, NEES proposes to make additional investments of up to $2 million, in NEES Energy as is necessary for NEES Energy to fulfill its current energy management services contracts through December 31, 1991.

Mississippi Power Company (70–7750)

Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, a wholly owned public-utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration under Sections 6(a), 7 and 12(c) of the Act and Rules 42(a) and 50(a)(5).

Mississippi proposes to issue and sell, in one or more transactions prior to June 1, 1992, up to $100 million aggregate principal amount of first mortgage bonds ("New Bonds"), having a maturity of not less than five nor more than 30 years, and up to $50 million of new preferred stock ("New Preferred"). Mississippi may use the proceeds of the sale to pay a portion of its cash requirements to carry on its electric utility business, or to retire outstanding first mortgage bonds, pollution control bonds and/or preferred stock pursuant to an order of the Commission dated October 20, 1987 (HCAR No. 24478).

The New Bonds to be issued by Mississippi will be sold for not less than 98 percent nor more than 101¾ percent of the principal amount plus interest (if any), which may be an adjustable interest rate determined on a periodic basis, or a fixed interest rate. The new securities may be subject to a mandatory or optional cash sinking

fund. Mississippi may enhance the marketability of the New Bonds by purchasing an insurance policy to guarantee the payment when due of the New Bonds. Mississippi seeks authority to deviate from the Commission's Statement of Policy Regarding First Mortgage Bonds and Preferred Stock. Mississippi proposes to issue and sell the New Bonds and Preferred under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder, and requests that it be authorized to begin negotiations with respect to the terms and conditions of the sale of the securities. It may do so.

Consolidated Natural Gas Company, et al. (70–7751)

Consolidated Natural Gas Company ("Consolidated") and its subsidiary companies, CNG Energy Company ("Energy"), CNG Research Company ("Research"), Consolidated Natural Gas Service Company, Inc. ("Service"), The Peoples Natural Gas Company ("Peoples"), each located at CNG Tower, Pittsburgh, Pennsylvania 15222–3199; CNG Development Company ("Development"), CNG Coal Company ("CNG-Coal"), both at One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244; CNG Producing Company ("Producing") and its subsidiary company CNG Pipeline Company ("Pipeline"), CNG; Tower, 1450 Poydras Street, New Orleans, Louisiana 70112–6000; CNG Transmission Corporation ("Transmission"), 445 West Main Street, Clarksburg, West Virginia 26301; Hope Gas, Inc. ("Hope Gas"), P.O. Box 2868, Clarksburg, West Virginia 26302–2868; The East Ohio Gas Company ("East Ohio"), 1717 East Ninth Street, Cleveland, Ohio 44115; The River Gas Company ("River Gas"), 324 Fourth Street, Marrietta, Ohio 45750; Virginia Natural Gas, Inc. ("Virginia Gas"), 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23501–3488; and West Ohio Gas Company ("West Ohio"), 319 West Market Street, Lima, Ohio 45802 (collectively, "Subsidiaries"), have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5).

Consolidated proposes to issue and sell, in a principal amount not to exceed $600 million outstanding at any one time, from time-to-time from July 1, 1990 through June 30, 1991: (1) Commercial paper ("Commercial Paper") in the form of short-term notes, in domestic ("Domestic Paper") or European markets ("Euro Paper") to dealers in commercial paper, or if the sale of commercial paper shall be impractical, (2) notes to banks ("Bank Notes") under lines of credit, without collateral. Consolidated proposes to issue Commercial Paper under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5). Domestic Paper will have varying maturities of not more than 270 days and Euro Paper will have maturities from 7 days to 183 days. Commercial Paper will not be prepayable prior to maturity. The effective interest cost on the date of sale of the Commercial Paper, whether Domestic Paper or Euro Paper, is not to exceed the prime rate of interest from a commercial bank. The Bank Notes will mature in not more than one year, will be prepayable in whole or in part at anytime, and will bear interest at a rate not to exceed the prime commercial rate of interest of the lending bank in effect on the date of each borrowing.

Consolidated further proposes, from time-to-time from July 1, 1990 through June 30, 1991, to make open account advances ("Advances") in an amount not to exceed $1.232 billion, through the Consolidated system money pool (HCAR No. 24128, June 12, 1986), to certain Subsidiaries up to the following principal amounts: (2) Development, $60 million; (2) Energy (other than cogeneration), $1 million; (3) Producing, $75 million; (4) Transmission, $600 million; (5) Service, $15 million; (6) Hope Gas, $40 million; (7) East Ohio, $260 million; (8) Peoples, $95 million; (9) River Gas, $5 million; (10) Virginia Gas, $65 million; and (11) West Ohio, $16 million. Advances will bear interest at the same effective rate of interest as Consolidated's weighted average effective rate of commercial paper or revolving credit borrowings. If no such borrowings are outstanding, then the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York.

Additionally, Consolidated proposes, from time-to-time from July 1, 1990 through June 30, 1991, to make up to $190 million in long-term loans, to be evidenced by the non-negotiable notes ("Notes") which will mature in not more than 30 years, to certain Subsidiaries up to the following principal amounts: (1) Development, $15 million; (2) Producing, $25 million; (3) Transmission, $75 million; (4) Hope Gas, $15 million; (5) East Ohio, $30 million; (6) Peoples, $25 million; and (7) West Ohio, $5 million. The Notes will bear interest: (1) Substantially equal to the effective cost of money to Consolidated obtained through its then most recent long-term debt financing; or (2) in the event Consolidated does not issue long-term debt by June 30, 1991, at a rate tied to the Salomon Brothers Inc. Bond Market Roundup dated nearest to the time of first takedown; or (3) if Consolidated subsequently issues long-term debt within one year of the date of the first takedown, at a rate adjusted to match Consolidated's cost of borrowing; or (4) should Consolidated not issue long-term debt during the subsequent year period, at the indicated rate at the time of first takedown for the life of the Note.

It is further proposed that Consolidated finance the capital expenditures of certain of its Subsidiaries through the acquisition of their respective shares of common stock, at par value, in an amount not to exceed $146 million, including: (1) CNG-Coal, 100,000 shares, $100 par value; (2) Development, 200,000 shares, $100 par value; (3) Research, 10,000 shares, $100 par value; and (4) Transmission, 1,150,000 shares, $100 par value. CNG-Coal, Development, Research, Transmission and Hope Gas propose to amend their respective certificates of incorporation to increase their authorized capital stock to 500,000, 175,000, 3,500,000, and 400,000 shares of common stock, respectively, at $100 par value.

Additionally, Producing proposes to make open account advances or long-term loans to Pipeline, to be evidenced by the issuance of non-negotiable notes, to, or to purchase up to 10,000 shares of common stock, $100 par value, from Pipeline in an aggregate amount not to exceed $1 million. The long-term loans and open account advances will bear interest at a rate equal to the cost of money to Producing through its borrowings from Consolidated.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–12996 Filed 6–4–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 1000 on Thursday, 21 June 1990, in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The agenda of this public meeting is as follows:

1. A report on the recent International Maritime Organization (IMO) Conference on the Revision of the 1974

Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (London, 26–30 March 1990);

2. A report on the recent 62nd session of the IMO Legal Committee (London, 2–6 April 1990), the principal focus of which was the question of Liability and Compensation related to the Maritime Carriage of Hazardous and Noxious Substances (HNS); this report will be followed by a discussion of ongoing U.S. preparations for the 63rd session, at which the HNS question will once again be the principal focus; and

3. A discussion of whether a diplomatic conference should be convened to take up the recently-completed Draft Convention on Maritime Liens and Mortgages prepared by the IMO/UNCTAD (United Nations Conference on Trade and Development) Joint Intergovernmental Group of Experts (JIGE) on Maritime Liens and Mortgages.

The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested concerning each of the foregoing agenda topics.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information or to submit views concerning any of the topics to be addressed at the SHC meeting, contact either Captain Jonathan Collom or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G-LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4163.

Dated: May 21, 1990.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 90–12943 Filed 6–4–90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering, and Development Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Federal Aviation Administration Research, Engineering, and Development Advisory Committee to be held Tuesday, June 26, 1990, at 9:00 a.m. The meeting will take place in the Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC, in the MacCracken Room on the tenth floor.

The agenda for this meeting will include Subcommittee Reports on the status of activities related to Aviation System Capacity, Transport Aircraft Safety, Tiltrotor Technology, and the National Simulation Laboratory. The committee will be briefed on the FAA's satellite communications initiatives and the role of the FAA's System Design Team.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact Mr. Martin T. Pozesky, Executive Director, Research, Engineering, and Development Advisory Committee, ASD–1, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8183.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on May 29, 1990.

Martin T. Pozesky,

Executive Director, Research, Engineering, and Development Advisory Committee.

[FR Doc. 90–12918 Filed 6–4–90; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

[Appeal of Inconsistency Ruling No. IR–28; Docket IRA–45]

City of San Jose, California; Restrictions on Storage of Hazardous Materials; Invitation to Comment

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The City of San Jose (the City) has appealed to the Administrator of the Research and Special Programs Administration (RSPA) the March 2, 1990 decision of the Director, Office of Hazardous Materials Transportation (IR–28; 55 FR 8884–8894, March 8, 1990), finding a hazardous materials storage ordinance of the City's Code to be inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) and thus preempted under section 112(a) of the HMTA. Comments are invited on the merits of the appeal.

DATES: Comments received on or before July 5, 1990, and rebuttal comments received on or before August 6, 1990 will be considered before an administrative ruling is issued by the Administrator. Rebuttal commens may discuss only those issues raised during the initial comment period and may not discuss new issues.

ADDRESSES: The appeal and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001. Comments and rebuttal comments must be submitted to the Dockets Unit and the above address and include the Docket Number IRA–45. Three copies are requested. A copy of each comment and rebuttal comment also must be sent to Joan R. Gallo, Esq., City Attorney City of San Jose, 151 West Mission Street, San Jose, California 95110; Lawrence W. Bierlein, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037; and John C. Kirtland, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street NW., Washington, DC 20005. Each comment and rebuttal comment submitted to the Dockets Unit must contain a certification that a copy has been sent to each person on the service list. (The following format is suggested: "I hereby certify that a copy of this comment has been sent to Joan R. Gallo, Lawrence W. Bierlein, and John C. Kirtland at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590; telephone: 202–366–4400.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA at section 112(a) (49 app U.S.C. 1811(a)) expressly preempts any requirements of a State or political subdivision thereof which is inconsistent with any requirement of the HMTA or the HMR. Section 107.209(c) of title 49, Code of Federal Regulations, sets forth the following factors, which are considered in determining whether a State or political subdivision requirement is inconsistent: (1) Whether compliance with both the State or political subdivision requirement and the HMTA or the HMR is possible; and (2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR.

Yellow Freight Systems, Inc. filed an application requesting a ruling concerning the consistency of chapter

17.68 of the City's Municipal Code with the HMTA and the HMR.

2. The Inconsistency Ruling (IR–28)

On March 2, 1990, the Director, Office of Hazardous Materials Transportation (OHMT) issued Inconsistency Ruling 28 (IR–28), which was published at 55 FR 8384 on March 8, 1990.

The Director determined that, insofar as they apply to the transportation of hazardous materials, including the loading, unloading, and storage incidental to that transportation, the following provisions of chapter 17.68 of the City's Code are inconsistent with the HMTA and the HMR and thus preempted under section 112(a) of the HMTA:

(1) The definitions of hazardous material in §§ 17.68.040D and 17.68.100, which differ significantly from the HMR definitions. The Director concluded that use of the City's definitions as a basis for imposing certain prerequisites to the loading, unloading, or storage of hazardous materials incidental to their transportation is inconsistent with the HMR;

(2) The permitting and related information and documentation requirements throughout chapter 17.68, which are discretionary and burdensome and, therefore, inconsistent;

(3) All other information and documentation requirements, including the emergency response information requirements, throughout chapter 17.68, which are burdensome, impossible to comply with, and, therefore, likely to cause unreasonable delays and diversions to other jurisdictions of hazardous materials transportation. The Director concluded that the City's information and documentation requirements are inconsistent with the HMR under both the "obstacle test" and the "dual compliance" standard;

(4) The hazardous materials storage requirements of § 17.68.160, which are different from, or additional to, an HMR provision, create confusion, and, therefore, are obstacles to the execution of that provision.

(5) The hazardous materials loading and unloading requirements of § 17.68.210, which are general and subjective, unlike the specific HMR requirements, and create both confusion about what standards must be met and likelihood of noncompliance with the HMR.

(6) The incident reporting requirements of § 17.68.450 insofar as they apply to incidents involving irradiated reactor fuel; and

(7) The civil penalty provisions of § 17.68.1050 insofar as they apply to inconsistent provisions of chapter 17.68.

The Director further determined that, insofar as they apply to the transportation of hazardous materials, including the loading, unloading, and storage incidental to that transportation, the following provisions of chapter 17.68 of the City's Code are consistent with the HMTA and the HMR:

(1) The incident reporting requirements of § 17.68.450 except insofar as they apply to incidents involving irradiated reactor fuel; and

(2) The civil penalty provisions of § 17.68.1050 insofar as they apply to consistent provisions of chapter 17.68.

3. The Appeal of IR–28

By letter dated April 5, 1990, the City appealed the Director's decision and requested that the Administrator overrule it and find that there is no inconsistency. The City further requested that a notice be published in the Federal Register inviting public comment on the decision. By letter dated April 26, 1990, the City filed a "letter brief," setting forth the bases for its appeal.

The City disagrees with the Director's conclusion that its definitions differ from the HMR definitions. The City reasons that its Hazardous Materials Storage Ordinance (HMSO) regulates materials that present an environmental or fire hazard. The City also states it does not regulate all DOT listed materials because many of the materials on the list do not present either of these hazards. The City maintains that to subject those materials to HMSO provisions would be unduly burdensome and provide no protection. The City further argues that HMSO-regulated materials are DOT regulated, and that the DOT Hazard Class is used to enforce the ordinance, thereby enhancing safety.

The City counters the Director's characterization of its permit approval requirements as "discretionary and burdensome" by stating that the Director's analysis ignores the fact that the HMSO contains land-use requirements by regulating storage facilities, not transportation.

The City disputes the Director's conclusion concerning its information and documentation requirements, arguing that the Director fails to consider that the HMSO does not require advance notice of each shipment. The City also contends that the provisions of the HMSO are designed to contain the spread of fires, to suppress fires, and to prevent damage to the environment, traditional functions of local government. The City avers that DOT regulations do not address emergency response at the receiving end. It argues that the HMSO addresses the site Emergency Response Plan and the on-site employees who will liaison with the employees, both local responsibilities.

The City takes exception to the Director's finding of inconsistency concerning its storage requirements. It states that the finding fails to consider that the HMSO does not contain construction standards for packages and requires only that containers be "product tight." The City argues that the HMSO does not attempt to override DOT specifications. It also contends that the HMSO's requirement for secondary containment in the storage area is reasonable because of the possibility of failure of the primary container by fire.

The City concludes that dual compliance with the HMSO and the HMTA is possible. According to the City, because the HMSO regulates storage only, it does not regulate transportation. Finally, the City states that because the HMSO utilizes the federal Hazard Class definitions, it presents no obstacle to compliance with the HMTA.

4. Public Comment

Comments should particularly address whether the provisions of chapter 17.68 of the City's Code, specified by the Director in IR–28, are inconsistent with the HMTA and the HMR insofar as they apply to the transportation of hazardous materials, including the loading, unloading, and storage incidental to that transportation. Persons intending to comment should examine the complete appeal document, which also references the City's earlier "letter brief" dated November 23, 1988, in the RSPA Dockets Unit and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–107.211).

Issued in Washington, DC on May 30, 1990.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 90–12919 Filed 6–4–90; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1989—Rev., Supp. No. 21]

Surety Companies Acceptable on Federal Bonds; Termination of Authority of Lancer Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the

Treasury to Lancer Insurance Company, under the United States Code, title 31, section 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 55 FR 11104, March 26, 1990.

With respect to any bonds currently in force with Lancer Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–3921.

Dated: May 30, 1990.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Services.

[FR Doc. 90–12916 Filed 6–4–90; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Grants Program for Private, Non-Profit Organizations In Support of International and Cultural Activities

The Office of Citizen Exchanges, (formerly known as the Office of Private Sector Programs) of the United States Information Agency (USIA) announces an Initiative Grant program to U.S. non-profit organizations for projects which are supportive of the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement prior to addressing inquiries to the office.

General Information

The Office of Citizen Exchanges of the United States Information Agency announces a program to support the international exchange objectives of the United States by stimulating and encouraging increased private sector commitment, activity, and resources through limited grants to non-profit U.S. institutions.

The Office is a networking instrument that serves to link the international exchange interests of U.S. private sector non-profit insitutions with counterpart institutions and organized groups in other countries. It gives high priority to project proposals that establish or promote linkages with American and foreign professional organizations.

Projects must feature an international people-to-people component, have a professional and cultural focus, and demonstrate a substantial contribution to long-term communication and understanding between the United States and the countries specified in this announcement.

Programs focus on substantive issues of mutual interest. The Office's projects are intellectual and cultural, not technical. Each private sector actvity must maintain its nonpolitical character and shall be balanced and representative of the diversity of American political, social, and cultural life. Programs under the authority of the Bureau and Cultural Affairs shall maintain their scholarly integrity and shall meet the highest professional standards. The participation of respected universities and/or professional associations and other major cultural institutions is encouraged.

AGENCY: United States Information Agency.

ACTION: The letter of interest and proposal submission deadlines for the following Initiative Grant Project has been extended.

Project for Young Korean Scholars

In order to receive grant application materials, prospective applicants should express their interest in writing no later than two weeks from publication of this announcement, to the Office of Citizen Exchanges at the address given below. Upon receipt of a letter of interest, E/PI will forward the project concept paper and all necessary application materials. Final proposals, complete with all necessary documentation and forms will be due by close of business, four weeks from the publication of this announcement. Incomplete proposals will not be reviewed.

Proposals must be in accordance with Project Proposal Information Requirements (OMB #31180175).

For additional information and planning assistance relating to this grant award prospective applicants should contact: Initiative Grants/Bilateral Accord Division, Office of Citizen Exchanges, United States Information Agency, 301 4th Street SW., room 220, Washington, DC 20547. *Attention*: Hugh J. Ivory.

SUMMARY: This notice hereby extends the letter of interest and proposal submission deadlines for the above project previously published in the **Federal Register** January 30, 1990 (55FR3136–3141). The subject and theme of the proposed project remains the same. The deadline for receipt of proposals is now close of business four weeks from the publication date of this announcement.

Dated: May 15, 1990.

Stephen J. Schwartz,

Director, Office of Citizen Exchanges.

[FR Doc. 90–12945 Filed 6–4–90; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 5, 1990.

Dated: May 25, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration
2. Application for Education Loan
3. VA Form 22-8725
4. The form is used to request information relating to an applicant's financial resources and education-related expenses to determine eligibility for an education loan.
5. On occasion
6. Individuals or households
7. 150 responses
8. 2/3 hours
9. Not applicable

[FR Doc. 90-12886 Filed 6-4-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 108
Tuesday, June 5, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 11, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 1, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-13125 Filed 6-1-90; 3:54 pm]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-90-11; Emergency Notice]

TIME AND DATE: Wednesday, June 6, 1990 at 10:30 a.m.

PLACE: Room 101, 500 E Street, S.W.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 731-TA-458-460 (P) (Polyethylene Terephthalate Film, Sheet, and Strip from Japan, the Republic of Korea, and Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: May 31, 1990.

Lisbeth K. Godley,

Acting Secretary.

[FR Doc. 90-13049 Filed 5-31-90; 5:07 pm]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10 a.m.; Friday, June 1, 1990.

PLACE: Room 4225, Interstate Commerce Commission, 12th Street & Constitution Avenue, N.W., Washington, DC 20423.

STATUS: Short Notice of Closed Conference.

The Commission voted to hold a conference on short notice and to close the Conference because it is likely to concern the agency's participation in a civil action within the meaning of 5 U.S.C. 552(b)(c)(10) and 49 C.F.R. 1012.7(d)(11). In addition to the Commissioners, the following staff will be in attendance:

Commissioner's staff

David M. Konschnik
Craig M. Keats
Debra Weiner
Ricky L. Crawford
Theodore K. Kalick
William A. Mullins

Office of General Counsel

Henri F. Rush
Ellen D. Hanson
Thomas J. Stilling

Office of Proceedings

Jane F. Mackall
Joseph H. Dettmar

Bureau of Accounts

Edward J. Guthrie
Leslie J. Selzer

Office of Transportation Analysis

Leland L. Gardner
Michael Redisch
Walter Strack

Office of the Secretary

Noreta R. McGee

MATTER TO BE DISCUSSED:

NOR. 40073
South-West Car Parts Co.
v.
Missouri Pacific Railroad Co.

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of Government and Public Affairs, Telephone (202) 275-7252.

Noreta R. McGee,

Secretary.

[FR Doc. 90-13086 Filed 6-1-90; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 4, 11, 18, and 25, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 4

Monday, June 4

9:00 a.m.
Briefing by ALWR Utility Steering Committee on Advanced Light Water Reactor Certification Issues (Public Meeting)

Friday, June 8

10:00 a.m.
Briefing on IIT Report on Vogtle Event (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Appeal Board Referral of Motion to Reopen Based on Certain Known Defects in Rosemount Transmitters
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2, 6, & 7)

Week of June 11—Tentative.

Thursday, June 14

2:00 p.m.
Briefing on Accident Sequence Precursor Program (Public Meeting)

Friday, June 15

10:00 a.m.
Briefing on Staff Recommendations for Implementation of Severe Accident Policy for Externally Initiated Events (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 18—Tentative

Wednesday, June 20

2:00 p.m.
Briefing on NUREG-1150 Peer Review Group Status (Public Meeting)

Week of June 25—Tentative

Wednesday, June 27

9:00 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine

Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: May 31, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–13111 Filed 6–1–90; 2:30 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
June 5, 1990

Part II

Environmental Protection Agency

40 CFR Part 35

Cooperative Agreements and Superfund State Contracts for Superfund Response Actions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

Office of Administration

40 CFR, Part 35

[FRL-3727-1]

RIN 2010-AA11

Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes the administrative requirements for CERCLA-funded Cooperative Agreements and Superfund State Contracts. The rule establishes these requirements for States, political subdivisions thereof, and Federally recognized Indian Tribes.

EFFECTIVE DATE: This rule becomes effective July 5, 1990.

COMPLIANCE DATE: This rule is effective for all CERCLA-funded Cooperative Agreements and Superfund State Contracts awarded on or after July 5, 1990.

EFFECTIVE DATE. This rule also applies to amendments to existing agreements when the response Statement of Work is changed.

ADDRESSES: Copies of materials relevant to this rule-making are contained in the Superfund docket located in room M2447 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460. The docket is available for inspection by appointment only between the hours: of 9 a.m. and 4 p.m. Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Richard A. Johnson, Office of Administration, PM-216F, U.S. Environmental Protection Agency, 499 South Capitol Street SW., Washington, DC 20460 at (202) 382-5296, or Vincent S. Martin of the same office at (202) 382-5294.

SUPPLEMENTARY INFORMATION: The contents of this preamble are as follows:

I. Background

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) was enacted in 1980 and launched the nation's first centralized and substantial commitment to clean up hazardous waste sites. CERCLA, or Superfund, provided Federal authority and resources to respond directly to releases (or threatened releases) of hazardous substances, pollutants or contaminants that could endanger human health or the environment. The law also authorized enforcement action and cost recovery from those responsible for a release of a hazardous substance. The Superfund Amendments and Reauthorization Act (SARA) was enacted on October 17, 1986 and continued the program initiated by CERCLA by reauthorizing CERCLA for an additional five years. SARA strengthened and expanded the cleanup program, authorizing the Hazardous Substance Superfund (the "Trust Fund") with $8.5 billion. SARA also strengthened the statutory mandate for State involvement in CERCLA response activities.

Two types of Superfund response agreements are essential to State participation in CERCLA implementation. The first, Superfund Cooperative Agreements, is the vehicle through which EPA can provide funds to States, political subdivisions thereof, and Indian Tribes to assume responsibility as lead or support agencies for response. Core Program Cooperative Agreements may also be used for non-site-specific activities that support involvement by States and Indian Tribes.

The second, Superfund State Contracts (SSCs), is necessary to ensure State involvement as mandated under section 121 of CERCLA and to obtain State assurances required under section 104 of CERCLA prior to remedial action. When EPA assumes the lead role for response, EPA and the State must document these assurances in a two-party SSC. When EPA assumes the lead role for a response on Indian Tribal lands, the Indian Tribe may be required to provide the real property acquisition assurance in a two-party SSC. Whenever a political subdivision takes the lead for response actions, a three-party SSC is required among EPA, the State, and the political subdivision to document State involvement and must be amended to provide the State's assurances prior to remedial action.

The Office of Management and Budget (OMB) revised OMB Circular A-102 by establishing a government-wide "common rule" which prescribes administrative requirements for Federal assistance awards to States, political subdivisions thereof, and Federally recognized Indian Tribes. EPA has implemented the common rule through 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." However, as provided in 40 CFR 31.4, part 31 authorizes EPA, among other things, to impose additional administrative requirements in codified regulations published in the **Federal Register** where necessary to implement statutory provisions.

Consistent with this 40 CFR part 31 authority, EPA is promulgating this final rule as 40 CFR part 35, subpart O, to implement the administrative requirements for the Superfund program. Some comments received on the Interim Final Rule expressed the opinion that subpart O is unnecessary, too broad in scope, and that it places an excessive burden on States. Prior to subpart O, the requirements for Cooperative Agreements and SSCs were documented in administrative regulations that applied to all EPA programs, and in numerous specific Superfund guidance materials. The rule now brings together the necessary information to ensure national consistency in the implementation of the program, and to ensure that the provisions of CERCLA are carried out. This rule incorporates specifically by reference those 40 CFR part 31 requirements that are applicable to recipients of Federal funds.

Subpart O establishes specific uniform requirements for recipients of CERCLA funds. These requirements supplement those in part 31 for Superfund Cooperative Agreements and SSCs in two ways. First, this subpart provides requirements specific to CERCLA, as amended, which were not addressed in part 31. The regulation adds requirements for States to follow for non-State-lead responses pursuant to an SSC, clarifies the role of Indian Tribes, describes Core Program and support agency Cooperative Agreements, and clarifies the requirements for quarterly reports and record documentation and retention. Second, this subpart modifies requirements which, although addressed in part 31, do not meet the minimum standards necessary for cost recovery as mandated under section 107 of CERCLA. For example, although part 31 does address procurement procedures, recipients must follow the procurement requirements in §§ 35.6550 through 35.6610 of this subpart when procuring goods or services under Superfund Cooperative Agreements. Those sections of part 31 that subpart O references that are applicable for CERCLA-funded Cooperative Agreements and/or

Superfund State Contracts are listed below:

31.3 Definitions.
31.6 Additions and exceptions: selected sections.
31.12 Special grant or subgrant conditions for "high-risk" grantees.
31.13 Principal statutory provisions applicable to EPA assistance awards.
31.20 Standards for financial management systems: source documentation and awarding agency review.
31.21 Payment: Basic standard, reimbursement, effect of program income, refunds, audit recoveries on payment, withholding payments, and cash depositories.
31.22 Allowable costs.
31.23 Period of availability of funds.
31.24 Matching or cost sharing: qualifications and exceptions, and valuation of third party in-kind contributions.
31.25 Program income.
31.26 Non-Federal audit.
31.30 Changes.
31.31 Real property.
31.34 Copyrights.
31.35 Subawards to debarred and suspended parties.
31.36 Procurement: Selected sections from procurement standards, contracting with MBEs/WBEs and small businesses, bonding requirements, and payment to consultants.
31.40 Monitoring by grantees.
31.41 Financial reporting.
31.42 Starting dates for records retention period and requirements for records access.
31.43 Enforcement.
31.44 Termination for convenience.
31.45 Quality assurance.
31.50 Closeout.
31.51 Later disallowances and adjustments.
31.52 Collection of amounts due.
31.70 Disputes.

The requirements in this subpart do not apply to Technical Assistance Grants or CERCLA research and development grants, including Superfund Innovative Technology Evaluation (SITE) Demonstration Cooperative Agreements.

II. Description of Major Issues

A. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP)

Subpart O references specific sections of CERCLA, as amended, in prescribing requirements. Although CERCLA, as amended, is the legislative initiative that provides for the cleanup of hazardous waste, the National Oil and Hazardous Substances Pollution Contingency Plan (the NCP, 40 CFR part 300) describes the guidelines and procedures for implementing CERCLA. The NCP has been revised to include the statutory requirements established by SARA. The Agency intends for requirements in the NCP and subpart O to be consistent with one another. Although some terms may be defined somewhat differently in the NCP and subpart O, these definitions are consistent with one another. Any terms not defined in subpart O shall have the meanings set forth in section 101 of CERCLA, 40 CFR part 31, and the NCP.

B. Indian Tribes

The definition of the term "Indian Tribe" in this subpart is the same as that found in CERCLA. CERCLA requires EPA to afford to Federally recognized Indian Tribes (as defined in CERCLA and this subpart) substantially the same treatment it does to States. However, to clarify the Superfund administrative requirements with which Indian Tribes must comply and those with which they need not comply, this Final Rule is careful to indicate the respective applicability of its requirements to States and Indian Tribes. Where a requirement applies only to a State, the term "State" is used, and where a requirement applies only to an Indian Tribe, the term "Indian Tribe" is used. Applicability of a requirement to both States and Indian Tribes is either stated as such, or is indicated by cross-reference.

Indian Tribes may be the lead or support agency for a response, and are eligible for both site-specific funding and non-site-specific funding. However, under the terms of CERCLA, Indian Tribes need not provide the section 104(c)(3) assurances. Consistent with the NCP (§ 300.510(e)(2)), this rule does not address whether Indian Tribes are States for the purpose of CERCLA section 104(c)(9). Although some Indian Tribes may lack the legal authority to do so, in general Indian Tribes are required to provide the real property acquisition assurance pursuant to CERCLA section 104(j).

C. Records Retention

Length of Retention

40 CFR part 31 establishes a three-year records retention requirement for the recipients of assistance agreements (40 CFR 31.42). In addition, part 31 specifies that if any litigation, claim, negotiation, audit or other action involving records for the project has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

Subpart O requires that recipients retain all records for ten years after the date of completion of all response actions at a site, or until any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been completed and all issues resolved, whichever is later. This requirement ensures that response action information remains available for a sufficient period to support government cost recovery cases. The ten-year requirement supersedes all Superfund guidance documents that specify a three-year retention period, including State Superfund Financial Management and Recordkeeping Guidance, dated January 1988. Subpart O also requires the recipient to obtain written approval from its EPA award official before disposing of any CERCLA records.

The recipient of a site-specific Cooperative Agreement must retain the supporting documentation for all activities undertaken pursuant to CERCLA, and must organize this documentation in a manner that satisfies cost recovery requirements. Site-specific costs of records retention activities (including organization, maintenance, storage and retrieval) should be charged to a site-specific Cooperative Agreement. To enable the prompt close-out of site-specific Cooperative Agreements, the deobligation of unused funds, and the timely commencement of enforcement actions for cost recovery, a recipient of a Core Program Cooperative Agreement may charge record retention expenses following completion of site-specific response activities to the Core Program Cooperative Agreement.

Method of Retention

Recipients may substitute microform copies for original supporting documentation for response actions (including financial and cost accounting records) undertaken pursuant to CERCLA. The microform copying must be performed in accordance with the technical regulations concerning micrographics of Federal Government records (36 CFR part 1230) and EPA records management procedures (EPA Order 2160). If the recipient decides to use microform copies, then the recipient must also perform microform copying of original documents periodically in the regular course of business, and may dispose of these records only upon EPA approval. Subpart O requires the recipient to obtain written approval from EPA before disposing of the original records that were used to make the microform copy. Records retention requirements specified in this subpart are applicable to microform.

D. Cost Accounting

The recipient of CERCLA funds is required to account for costs as stipulated in the Cooperative Agreement: by site, activity, and operable unit, as applicable. The recipient is not required to track expenses by site for pre-remedial or Core Program Cooperative Agreement activities. However, for pre-remedial activities (i.e. preliminary assessments and site inspections), the recipient is required to track expenses by a single Superfund account number designated specifically for the pre-remedial activity. In addition, the recipient is required to report estimated site-specific technical hours spent for the pre-remedial activity. For Core Program activities, the recipient is required to track expenses by the Superfund account number(s) designated specifically for Core Program activities.

E. Financial Status Report

Although the Financial Status Report form (SF–269) does not request information by site, activity, and operable unit, the recipient must continue to provide this financial information, as applicable, in order to support cost recovery.

F. Credit for NPL Sites

This regulation addresses requirements for obtaining CERCLA credit in § 35.6285(c). This section describes the requirements for expenditures incurred before a site is listed on the NPL and for those incurred after a site is listed on the NPL. Section 104(c)(5)(A) of CERCLA, as amended, allows credit for amounts expended by a State for remedial action at an NPL site pursuant to a contract or Cooperative Agreement. In addition, section 104(c)(5)(B) allows credit for expenses for remedial action at a site incurred before the site is listed on the NPL if the site is subsequently listed on the NPL, and the expenses are determined to be creditable.

G. Purchase of Personal Property

Although subpart O provides the recipient with an option for obtaining equipment with CERCLA funds, it is not EPA's intent to use the Hazardous Substance Superfund to finance large purchases of equipment indiscriminantly. Therefore, the recipient must meet stringent requirements before EPA will allow the purchase of equipment with CERCLA funds. EPA encourages the recipient to use its own funds to purchase equipment, and charge the Cooperative Agreement for its use. Although EPA must approve this usage rate, the recipient does not then have to comply with the other property standards or disposition requirements of this regulation.

H. Twenty-year Waste Capacity

This regulation includes the requirement that States must provide the assurance regarding availability of hazardous waste treatment and disposal facilities as required by CERCLA section l04(c)(9) and § 300.510(e) of the NCP. EPA has also issued guidance on this assurance.

I. Removals

Because there must be sufficient time to award a Cooperative Agreement before a State, political subdivision, or Indian Tribe may take the lead, generally only those removal actions with a planning period of more than six months will be eligible for Cooperative Agreements. Removals with a planning period of more than six months are those where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is at least six months before on-site activities must begin. The general coordination of administrative and/or management activities associated with such removals is eligible for Core Program funding.

J. Support Agency Cooperative Agreements

Under a support agency Cooperative Agreement, States, political subdivisions and Indian Tribes may receive funding to perform site-specific activities to support an EPA-lead response. An example of support agency activities that may be funded under a Cooperative Agreement is the review and comment on technical data and reports relating to implementation of the remedy. States, political subdivisions and Indian Tribes are encouraged to use support agency Cooperative Agreements to fund their site-specific support activities, and must not fund such activities under the Core Program. This regulation codifies the requirements for recipients of support agency Cooperative Agreements in §§ 35.6240 through 35.6255 of this subpart.

K. Core Program Cooperative Agreements

States and Indian Tribes are eligible to receive Core Program Cooperative Agreements in order to conduct CERCLA implementation activities that are not directly assignable to specific sites, but are intended to support a State's or Indian Tribe's ability to participate in the CERCLA response program. Although §§ 35.6215 through 35.6235 are dedicated to Core Program Cooperative Agreements, whenever possible this Final Rule integrates the requirements of the Core Program, and indicates activities eligible for funding, throughout the regulation.

L. Superfund State Contracts (SSCs)

This subpart establishes the requirements for both two-party and three-party SSCs that are required to obtain CERCLA section 104 assurances before an EPA-lead remedial action can begin and to ensure State and Indian Tribal involvement in response activities.

III. Section by Section Analysis

During the period of public comment on the Interim Final Rule, EPA received numerous comments on specific sections of 40 CFR part 35, subpart O. The following Section by Section Analysis includes a presentation of each issue raised by public comment and an explanation of EPA's response.

Each public comment is presented at the appropriate Interim Final Rule section listing under the heading "Issue" and EPA's response is provided under the heading "Final Rule." To facilitate public review, the section listings in this Section by Section Analysis follow the organization of the Interim Final Rule. However, when EPA's response has resulted in a revision to the rule (including an organizational change resulting in a new section, paragraph, or subparagraph), the revision is indicated under the "Final Rule" heading.

The revisions discussed below are not all the result of public comment on the Interim Final Rule. Many result from EPA's own administrative experience to date or from policy changes. When the revision is not the result of an "issue" per se, the entire discussion of the revision is found at the "Final Rule" heading. EPA also corrected several typographical errors found in the Interim Final Rule, and made several editorial changes. Significant editorial changes in a section are presented under the "Final Rule" heading.

Section 35.6005 Purpose and Scope

Final Rule: A new paragraph (d) is added to this section of the rule to clarify that, except as provided for in CERCLA section 111(e)(3), Superfund monies for remedial action cannot be used by recipients for remedial action with respect to federally-owned facilities. When a cleanup is undertaken by another Federal entity, the State, political subdivision or Indian Tribe may pursue funding for its involvement

in response activities from the appropriate Federal entity.

Section 35.6015 Definitions

Section 35.6015(a)(1) Activity

Issue: In order to better understand the reporting requirements of subpart O, several respondents requested clarification of the definition of "activity."

Final Rule: This definition is revised to clarify that tasks which make up an "activity" pursuant to this rule are CERCLA-funded tasks, and that such tasks include those eligible for funding under the Core Program, as well as those for site-specific response.

Section 35.6015(a)(11) Construction

Issue: One respondent objected to the definition of "construction" on the grounds that it specifically excludes dismantling or demolition of buildings and other structures from remedial actions. The respondent noted that there are a number of remedial actions where demolition and off-site disposal of structures is an integral part of the effort and questioned whether this definition might adversely impact allowable costs in ways that EPA does not anticipate.

Final Rule: The definition of "construction" is not intended to exclude dismantling or demolition of buildings and other structures from remedial actions, and should not be read that way. Remedial action includes all tasks identified in a remedial action Cooperative Agreement. EPA did change § 35.6595(b)(4) by deleting subparagraph (ii). Subparagraph (i) remains unchanged in the Final Rule and references the Department of Labor regulations on the Davis-Bacon Act and other labor standards provisions.

Questions have been raised concerning the applicability of the Davis-Bacon Act to the excavation and incineration of soils (or other forms of treatment). The Davis-Bacon Act applies to that portion of the cleanup work (as defined in the remedy selection document) which calls for excavation, substantial earth moving, removal of contaminated soil, and the actual mobilization of the incinerator followed by restoration of the landscape, regardless of whether such activities are performed with any other construction activities done on any buildings or other structures at the cleanup site. The operation of the incinerator, including materials handling, may be classified as service type work.

The term "landscaping" includes not only such activities as planting trees, shrubs, and lawns when performed in conjunction with other construction work (e.g., the erection of a building or other structure), but also elaborate landscaping activities such as substantial earth moving and/or rearrangement or reclamation of the terrain.

Site clearing, when performed as part of demolition work or the dismantling of buildings or other structures, is subject to the Davis-Bacon Act if the clearing of the site is to be followed by the construction of a public building or public work at the same location. If no further work at the site is contemplated, the Davis-Bacon Act does not apply to such demolition or dismantling.

Section 35.6015(a)(24) Intergovernmental Agreement

Final Rule: In order to clarify that such an agreement is not a "contract" as defined in this rule, EPA recognized the need to include in the rule a definition of the term "intergovernmental agreement." Therefore, a definition of "intergovernmental agreement" has been added to the rule.

Section 35.6015(a)(28) Operable Unit

Issue: EPA now requires recipients to budget and account for funds by operable unit, as applicable.

Final Rule: EPA added a definition of the term "operable unit" to the rule, and has made reference to operable units throughout the rule where applicable. The definition found in the rule is consistent with that found in the NCP.

Section 35.6015(a)(29) Operation and Maintenance (O&M)

Issue: EPA received several comments asking for clarification of this definition. The respondents noted that although O&M is not included in the definition of "activity," the definition in the Interim Final Rule implies that it *is* an activity. One respondent suggested adding O&M to the definition of activity to address this issue. Others requested clarification as to when O&M begins and what measures it involves.

Final Rule: EPA is responding to the above comments by clarifying the definitions of both "activity" and "O&M." At § 35.6015(a)(1), the definition of activity has been revised to emphasize that a set of tasks constitutes an activity only if those tasks are funded by CERCLA. Since O&M is the responsibility of the State and is not funded by CERCLA, the definition of O&M has been revised to remove any reference to activities. O&M is financed by CERCLA on behalf of an Indian Tribe, thus the removal of the sentence "O&M is the sole responsibility of the State" from the definition.

Except for ground water and surface water restoration, as provided in CERCLA section 104(c)(6), O&M, as a final step in the remedial process, begins when a remedy is declared "operational and functional." A remedy becomes operational and functional either one year after construction is complete, or when the remedy is determined concurrently by EPA and the State to be functioning properly and performing as designed, whichever is earliest. This is a technical determination based on individual site characteristics and the specifications in the Record of Decision (ROD), and should not be addressed in an administrative regulation. For a more detailed explanation of O&M, including a discussion of EPA's policy on source control maintenance measures, see the preamble of the NCP, Final Rule (55 FR 8666), addressing 40 CFR 300.435(f).

Section 35.6015(a)(39) Quality Assurance Project Plan

Final Rule: EPA has revised the definition of "Quality Assurance Project Plan" to be consistent with the NCP.

Section 35.6015(a)(42) Services

Final Rule: This definition was revised to delete language specifying conditions under which "services" were subject to the Davis-Bacon Act. (See the discussion at § 35.6015(a)(11) above).

Section 35.6015(a)(47) Superfund State Contract (SSC)

Issue: One respondent stated that EPA should acknowledge Superfund Tribal Contracts in addition to Superfund State Contracts (SSCs).

Final Rule: When an SSC is signed between EPA and an Indian Tribe, it may be referred to as a "Superfund Tribal Contract." However, this definition has not been changed.

Section 35.6015(a)(49) Support Agency

Issue: One respondent recommended that this definition be expanded to recognize that EPA assumes a primary role as a support agency during a State-lead response.

Final Rule: We agree. EPA may serve as the support agency during a State-lead response. The definition of "support agency" has been revised to acknowledge this role.

Section 35.6015(a)(50) Task

Issue: One respondent said that there has been some confusion as to what level of detail EPA expects in the quarterly reports. Since the level of detail in quarterly reports is determined by the objectives and milestones (i.e., the *tasks*) enumerated in the Statement

of Work, this comment is addressed under this subparagraph.

Final Rule: To clarify its meaning, and to ensure consistency with the definition of "activity," the term "task" has been reworded as "an element of a Superfund response activity identified in the Statement of Work of a Superfund Cooperative Agreement or a Superfund State Contract." The tasks enumerated in a Statement of Work are negotiated by EPA and the assistance recipient(s). Using the revised definition of "task," the assistance recipient must report technical and financial progress on the objectives and milestones identified in the Statement of Work. Since these are *negotiated* objectives and milestones, reporting progress on their accomplishment should not be unexpected.

Section 35.6015(b) Definitions

Issue: This paragraph of the Interim Final Rule did not include a reference to definitions found in CERCLA, as amended, or the NCP.

Final Rule: This paragraph has been revised to state that if a term is not defined in § 35.6015, it is to be understood as defined in section 101 of CERCLA, as amended, 40 CFR part 31 and 40 CFR part 300 (the NCP).

Pre-remedial Response Cooperative Agreements

Section 35.6050 Eligibility for Pre-remedial Cooperative Agreements

Issue: CERCLA § 104(d)(I) gives EPA the authority to enter into Cooperative Agreements with political subdivisions. However, before funds can be obligated a three-party SSC must be signed between the State, EPA, and the political subdivision. At the preremedial stage, this is an unnecessary administrative burden and should preclude most political subdivisions from any formal involvement with EPA. Moreover, the preliminary assessment/site investigation (PA/SI) may show that further action is not needed, or that site conditions do not require listing on the NPL. Given these circumstances, efficiency in the Superfund program would be maintained only if political subdivisions were not eligible for pre-remedial Cooperative Agreements.

Nonetheless, under those circumstances where the involvement of a political subdivision would be more economical, efficient, and appropriate than that of a State, based upon the number of sites to be addressed and the political subdivision's past program involvement, it may be more productive to allow the local government to carry out preliminary actions. In these instances, a pre-remedial Cooperative Agreement should be awarded; however, an SSC is not required at this stage. If the PA/SI shows that listing on the NPL is necessary, the political subdivision must enter into a three-party SSC before any remedial activities begin.

Final Rule: This section has been revised to state that political subdivisions may also apply for pre-remedial response Cooperative Agreements.

Section 35.6055 State-lead Pre-remedial, Cooperative Agreements

Final Rule: Executive Order 12549 and 40 CFR part 32 require applicants for Federal assistance agreements to certify that they are not debarred or suspended from participating in government procurement and nonprocurement programs. The Drug-Free Work Place Act of 1988 requires applicants to certify that they will maintain a drug-free workplace. Finally, section 319 of Public Law 101–121 requires applicants for any Federal award in excess of $100,000, to certify that no appropriated funds will be used to pay for lobbying efforts directed toward the government. EPA recognized the need to include in the Final Rule a revised list of all items, including these certifications, which must accompany an application for CERCLA-funded Cooperative Agreements. Paragraph § 35.6055(a) is revised to list the items that must be submitted with an application for a pre-remedial Cooperative Agreement. The requirement in the Interim Final Rule with respect to intergovernmental review has been removed since it is a standard part of the "Application for Federal Assistance" (SF–424), and therefore does not require specific mention.

Remedial Response Cooperative Agreements

Section 35.6105(a) Remedial Application Requirements

Final Rule: EPA has revised the Final Rule to include a list of all items, including the certifications discussed at § 35.6055 above, which must accompany an application for a remedial Cooperative Agreement. The requirement in the Interim Final Rule with respect to intergovernmental review has been removed since it is a standard part of the "Application for Federal Assistance" (SF–424), and therefore does not require specific mention.

Section 35.6105(a)(1)(i) Budget Sheets

Issue: EPA recently made a policy decision that, as negotiated in a Cooperative Agreement, all cost accounting is to be done not only by site and activity, but by operable unit as well.

Final Rule: This subparagraph is renumbered § 35.6105(a)(1) and is revised to account for operable units. Similar changes have been made at the following sections: §§ 35.6270(a)(1); 35.6270(a)(6)(i); 35.6270(a)(6)(ii); 35.6280(b)(1); 35.6300(a)(3)(i); 35.6315(c)(2)(iii); 35.6315(c)(3)(ii); 35.6320(a); 35.6320(b); 35.6660(a)(1)(iii); 35.6700(a); and 35.6700(c)(7).

Section 35.6105(a)(1)(ii) A site-specific Statement of Work

Issue: One respondent stated that the task-specific cost reporting requirements in the Interim Final Rule at §§ 35.6105(a)(1)(ii), 35.6650(b)(3) and 35.6910 (which cross-references §§ 35.6105(a)(1)(ii) and 35.6650(b)(3)) add a burdensome additional level of detail to the financial recordkeeping requirements of the Superfund program.

Final Rule: (This subparagraph is renumbered § 35.6105(a)(2)(ii).) EPA does not agree with the above comment. The estimate by task required in a Statement of Work occurs at the application stage of a Cooperative Agreement and provides an outline of the costs expected at a particular site. It is not used to track actual costs that accrue during a response activity. Quarterly progress reports serve as internal mechanisms that allow EPA to keep recipients "on track" with respect to expenditures by task. EPA believes that the estimates by task in the Statement of Work and in Quarterly Progress Reports are good project management practices. Therefore, although § 35.6105(a) has been reorganized, the task-specific cost reporting requirements have not been changed.

Section 35.6105(a)(5)

Issue: One respondent requested that EPA allow States to approve contractor prepared site-specific quality assurance project plans, as long as the recipient's quality assurance standards and review procedures comply with the quality assurance requirements described in EPA policy and guidance.

Final Rule: (This subparagraph is renumbered § 35.6105(a)(2)(vi)). Except for minor wording changes, the rule has not been changed. This is to ensure consistency with the NCP, which generally provides for EPA review and approval of site-specific quality

assurance project plans. However, as noted in the preamble of the NCP (see preamble of the NCP, Final Rule, addressing 40 CFR 300.420(c)(4)), portions of the quality assurance project plan may incorporate by reference non-site-specific standardized portions (i.e., standard operating procedures) of previously approved plans, making it unnecessary to reproduce non-site-specific quality assurance procedures for every site.

Section 35.6105(b) CERCLA Assurances

Section 35.6105(b)(3) Off-site Storage, Treatment, or Disposal

Final Rule: This subparagraph has been clarified and renumbered § 35.6105(b)(4).

Section 35.6105(b)(4) Real Property Acquisition

Issue: EPA received several comments suggesting that the property acquisition assurance be clarified.

Final Rule: (This subparagraph is renumbered § 35.6105(b)(5).) EPA revised this subparagraph to better explain when and by whom real property will be acquired with CERCLA funds. This subparagraph has also been revised to indicate that the recipient must ensure the continuation of any institutional controls which restrict the use of the property.

Section 35.6110 Indian Tribe-lead Remedial Cooperative Agreements

Section 35.6110(b)(2)

Issue: One respondent stated that an Indian Tribe whose lands are held in trust by the Federal government may not be in a position to provide this assurance, or may require the approval of the Department of the Interior to do so.

Final Rule: EPA recognizes that under certain circumstances obtaining the real property acquisition assurance from an Indian Tribe may not be possible. For this reason, the words "to the extent of its legal authority" qualify the requirement of this assurance wherever it applies to Indian Tribes in the Final Rule. EPA will address on an individual basis the proper application of he CERCLA section 104(j) assurance in the extreme case wherein an Indian Tribe lacks such authority. This subparagraph has also been revised to indicate that the recipient must ensure the continuation of any institutional controls which restrict the use of the property.

Section 35.6115 Political Subdivision-lead Remedial Cooperative Agreements

Section 35.6115(a) General

Final Rule: EPA recognized the need to indicate in this paragraph that a political subdivision may enter into a Cooperative Agreement to assume the lead responsibility for all, or a portion, of the remedial activity at a site. This paragraph has been revised accordingly.

Section 35.6115(a) Three-party Superfund State Contract Requirements

Final Rule: (This paragraph is renumbered § 35.6115(b).) EPA recognized the need to clarify that the CERCLA section 104 assurances must be provided in the SSC *before* a Cooperative Agreement is awarded to a political subdivision. This paragraph has been revised accordingly.

Section 35.6115(c) Political Subdivision Cooperative Agreement Requirements

Final Rule: EPA recognized the need to clarify the application and administrative requirements set forth in this paragraph. This paragraph has been revised accordingly.

Section 35.6120 Twenty-year Waste Capacity

Issue: This section of the Interim Final Rule describes the 20-year waste capacity assurance that must be provided before EPA will enter into a Cooperative Agreement for remedial action pursuant to CERCLA section 104(c)(9). EPA received several comments on this section. One respondent said that the rule should clarify that the 20-year capacity is dated from the signing of the "State capacity assurance Cooperative Agreement" (sic), not the "site-specific Cooperative Agreement."

Final Rule: The 20-year waste capacity requirement is incorporated into § 35.6105(b)(3) and other sections of the Final Rule, as appropriate. This assurance *is* site-specific for each remedial action. The State must provide this assurance in a Cooperative Agreement before initiating the remedial action. Where CERCLA section 104(c)(9) states that "the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or Cooperative Agreement with the President providing [the 20-year waste capacity assurance] * * *," the referenced contract or Cooperative Agreement is either a Superfund State Contract or a Superfund Cooperative Agreement.

The 20-year waste capacity assurance must be provided for each remedial action Cooperative Agreement or Superfund State Contract signed before remedial action begins at an NPL site. This assurance may be provided through reference to a State's Waste Capacity Plan, development of which can be funded through a Core Program Cooperative Agreement, and which should be developed in compliance with EPA policy (See OSWER Directive 9010.00A, "Agency Review of SARA Capacity Assurance Plans") and § 300.510 of the NCP. EPA will determine whether the State's assurance is adequate.

Final Rule: Notification of the out-of-state or out-of-Indian Tribal jurisdiction transfer of CERCLA wastes. Section 35.6120 of this Final Rule contains the new requirement of a written notification of the out-of-State transfer of CERCLA waste. Based upon its experience to date, EPA believes that remedial and non-time-critical removal actions involving out-of-State transfer of CERCLA waste may present special concerns for the particular State designated to receive such waste. EPA further recognizes that the safe and timely accomplishment of these out-of-State actions may require direct assistance from State or local authorities.

For these reasons, as soon as practicable following the award of a contract for the out-of-State transfer of CERCLA waste that exceeds 10 cubic yards in total volume, the recipient of a remedial Cooperative Agreement is now required to notify the designated receiving State (i.e., the State Superfund program office, State environmental agency director) of the name and location of the facility to which the CERCLA waste is to be shipped, the type and quantity of CERCLA waste to be shipped, the expected schedule for the shipments, and the method of transportation. Such notification must be in writing, and will enable the receiving State to obtain from its permitted facilities any other information it may need in order to support the out-of-State action.

This notification requirement applies to States, Indian Tribes and political subdivisions that have the lead for a remedial action. When EPA has the lead for a response action, EPA will notify the appropriate official(s) consistent with OSWER directive 9320.07, "Notification of Out-of-State Shipments of Superfund Site Wastes." Dependent upon State involvement as a support agency, the State may provide the notification on behalf of EPA.

Enforcement Cooperative Agreements

Section 35.6150 Eligibility for Enforcement Cooperative Agreements

Issue: One respondent asserted that Indian Tribes should be eligible for enforcement Cooperative Agreements, pursuant to CERCLA section 104(d)(1)(A).

Final Rule: (This paragraph is renumbered § 35.6145.) In the Interim Final Rule at 40 CFR part 35, subpart O, EPA did not provide for political subdivision- or Indian Tribal-lead involvement in CERCLA enforcement actions through enforcement Cooperative Agreements. However, political subdivisions and Indian Tribes were afforded the opportunity to participate in EPA negotiations with potentially responsible parties for actions that relate to land under the jurisdiction of the local (political subdivision) or Tribal government, or that directly impact such land; in these cases, the political subdivision or Indian Tribe could receive funding through a support agency Cooperative Agreement. In addition, political subdivisions or Indian Tribes could apply for funding through an enforcement Cooperative Agreement under an official deviation from the rule.

Under CERCLA section 104(d)(1)(A), political subdivisions and Indian Tribes may apply for enforcement Cooperative Agreements, and enter into such agreements if the local government or Tribe is capable of carrying out enforcement actions. EPA has modified the Final Rule to clarify this. However, before entering such an agreement, EPA must determine an applicant's eligibility to enter into an enforcement Cooperative Agreement. The Final Rule at § 35.6145 requires a description and demonstration of authorities, jurisdiction, and implementation capabilities. The full extent of these requirements will depend upon the scope of the enforcement Cooperative Agreement.

For example, if the State were to seek an enforcement Cooperative Agreement for an action to compel remedial action, EPA would consider the liability scheme (parties liable, strict and joint and several liability, limited defenses, the absence of a requirement for a showing of irreparable injury, administrative record review on an arbitrary and capricious standard, etc.), past State actions, State technical and legal capabilities, the relationship of the site or operable unit to other sites or operable units, other implementation concerns, as well as the priority of funding this action in light of other potential expenditures. If the enforcement Cooperative Agreement were designed to enable the State to obtain access to a site, different and more narrow requirements would be considered. The eligibility criteria for all future enforcement Cooperative Agreements (including those entered into by political subdivisions and Indian Tribes) are very similar to those set forth for States in OSWER Directive 9831.6, "CERCLA Funding of State Enforcement Actions at National Priorities List Sites."

This section has been renumbered § 35.6145 and has been revised to indicate that States, political subdivisions and Indian Tribes may apply for enforcement Cooperative Agreements.

EPA added a new section at § 35.6150 of the Final Rule, "Activities eligible for funding under Enforcement Cooperative Agreements," to indicate the activities eligible for funding under enforcement Cooperative Agreements. Fundable tasks that comprise the enforcement activities listed in § 35.6150(a) are set forth in current EPA enforcement policy.

Issue: The issue arose whether States may receive enforcement Cooperative Agreements to interact with Federal facilities.

Final Rule: This rule does not address whether States may receive enforcement Cooperative Agreements to interact with Federal facilities. The eligibility of State involvement with Federal facilities will be addressed in future guidance.

Removal Response Cooperative Agreements

Section 35.6200 Eligibility for Removal Cooperative Agreements

Final Rule: EPA has clarified language to differentiate removals based on the planning period, rather than on a "time critical" vs. "non-time-critical" basis. The policy regarding roles States and Indian Tribes may assume during a removal has not changed.

Section 35.6205 Removal Cooperative Agreements

Final Rule: EPA has revised this section to indicate that, when a removal action is necessary and involves the out-of-State shipment of CERCLA wastes, and when, based on the site evaluation, the lead agency determines that a planning period of more than six months is available before the removal activities must begin, the lead agency must comply with the out-of-State notification requirement set forth for States at § 35.6120.

Financial Administration Requirements Under a Cooperative Agreement

Section 35.6250 Standards for Financial Management Systems

Issue: One respondent stated that EPA should expand site- and activity-specific obligations, drawdowns, and reports to include operable units. Since the EPA Regions must provide information by operable unit to EPA Headquarters, assistance recipients should also provide information to the Regions in this manner. Another respondent stated that reporting and tracking of funds at the operable unit level would be burdensome to the recipient and the EPA grants processing office, since formal amendments would be required to transfer funds from one operable unit to another.

Final Rule: (This section is renumbered § 35.6270.) Recipients of Federal funds are accountable for the use of these monies and must provide EPA with regular reports on the associated expenditures. With the promulgation of this Final Rule, the recipient and EPA Region, in negotiating a Cooperative Agreement, must agree to track costs and activities by site, activity, and operable unit, as negotiated in the Cooperative Agreement. The level of detail in reports should be comparable to the tasks specified in the Statement of Work and funds obligated for these tasks through the Superfund Cooperative Agreement. This section is revised to incorporate references to operable units, where applicable, and to reflect the removal of recipient contractor requirements to § 35.6550(b)(4).

Whenever appropriate, EPA integrated the requirements of the Core Program throughout the regulation, rather than include all requirements in a specific section on the Core Program. Subparagraph § 35.6270(a)(4) is added to state the financial management requirements for the Core Program.

Section 35.6250(b)(1) Recordkeeping System Standards

Issue: EPA received comments from some recipients who consider this rule's recordkeeping requirements too restrictive.

Final Rule: (This subparagraph is renumbered § 35.6270(b)(1).) Given CERCLA's mandate to ensure the proper management of the Trust Fund and to support cost recovery efforts, EPA does not believe that its cost documentation requirements are excessive.

Section 35.6250(b)(2) Recordkeeping System Standards

Issue: One respondent stated that 30 days may not be enough time to retrieve some records, such as employee time records, since such information is not filed by site.

Final Rule: (This subparagraph is renumbered § 35.6270(b)(2).) Documentation of costs incurred and technical progress at a site is required by EPA to present to attorneys for a Potentially Responsible Party. This documentation is required within a specified time period following the formal filing of litigation to recover costs. Assistance recipients must provide the necessary site-specific documentation to EPA upon request to support the cost recovery activities mandated by CERCLA. A State or Indian Tribe may apply for a Core Program Cooperative Agreement to fund the development of recordkeeping systems that enable the prompt delivery of site documentation. We realize that the 30 day period may not be sufficient time for a recipient to provide the necessary cost documentation. Therefore, we changed the requirement to state that, if both EPA and the State agree, the 30 day time period may be changed as long as the agreed upon time frame is in the Cooperative Agreement.

Section 35.6255 Period of Availability of Funds

Issue: One respondent said that a State should be reimbursed expenses even if the State entered into a Cooperative Agreement after incurring costs at a site (i.e. pre-award costs). The respondent noted that the planning activity often begins long before the Cooperative Agreement is finalized, and suggested that the actual expenses should be reimbursed through a deviation of Subpart O when the Cooperative Agreement is complete.

Final Rule: (This section is renumbered § 35.6275.) This section does not provide for the reimbursement of pre-award costs. This helps EPA to ensure that all remedial activities carried out at a site are consistent with EPA's clean-up standards. However, this section is revised to allow recipients to incur costs between the date the award official signs the assistance agreement and the date the recipient signs the agreement, provided the costs are identified in the agreement and the recipient does not change the agreement.

Section 35.6260 Cost Sharing

Final Rule: This section has been deleted from the rule. Cost sharing requirements have been incorporated in other sections of the rule, as appropriate.

Section 35.6265 Payments

Section 35.6265(b) Payment Method

Issue: One respondent said that because some recipients are not eligible for payment by Letter of Credit, these recipients should be allowed to use the "working capital" advances allowed by 40 CFR part 31.

Final Rule: (This paragraph is renumbered § 35.6280(b).) EPA agrees with the above comment and has added subparagraph § 35.6280(b)(3) "Working Capital Advances" to this section.

Section 35.6265(b)(1) Letter of Credit

Issue: One respondent asked whether recipients should be able to drawdown funds in an enforcement Cooperative Agreement for PRP searches and issuance of notice letters on a non-site-specific basis and provide site-specific reports on such drawdowns at a later date. A second respondent asserted that it is not appropriate to require recipients to report drawdowns by site and activity for cost recovery purposes, since the Financial Status Reports (FSRs) and Letters of Credit provide EPA with the assurance that funds were expended appropriately.

Final Rule: (This subparagraph is renumbered § 35.6280(b)(1).) In all cases, funds must be drawn down in the manner negotiated and stipulated in the Cooperative Agreement. For cost recovery purposes, it is necessary that funds be drawn down on a site, activity, or operable unit-specific basis (pre-remedial and Core Program costs can be drawn down on an activity-specific basis).

Section 35.6270 Recipient Payment of Response Costs

Final Rule: EPA recognized the need to clarify that CERCLA credits earned on a site-specific basis may not be used to meet cost-share requirements for non-site-specific funding through the Core Program. This section is renumbered and subparagraph § 35.6285(c)(3) is revised accordingly.

Section 35.6270(d) Over Match

Final Rule: EPA recognized the need to clarify how the rule will handle "over match" funds. This section is renumbered § 35.6285 and paragraph § 35.6285(d) is added to the rule to clarify EPA's requirements accordingly.

Section 35.6270(e) Advance Match

Final Rule: EPA recognized the need to clarify how the rule will handle advance match funds, and to indicate that advance match may not be used for credit against cost-share obligations under the Core Program. This paragraph is renumbered § 35.6285(f) and is revised accordingly.

Personal Property Requirements Under a Cooperative Agreement

Section 35.6300 General Personal Property Acquisition and Use Requirements

Section 35.6300(a)(2) General

Issue: One respondent recommended that the wording of this subparagraph be changed to state that the property must be "requisitioned" during the approved project period, not "acquired." The respondent said that the bid and procurement procedures stipulated by the regulation are so time-consuming that sometimes the property is received after the project period has expired.

Final Rule: Use of the term "requisitioned" would allow property to be ordered, but not necessarily received, during the project period. But equipment ordered as part of a remedial response must be equipment that is necessary to complete the project. If a piece of property has not arrived by the end of the project, this indicates that the remedial action is not complete. If this is so, the recipient should amend the agreement to provide for a no-cost extension to the period of performance. This subparagraph has not been changed.

Section 35.6315 Alternative Methods for Obtaining Property

Section 35.6315(a) Purchase Equipment With Recipient Funds

Issue: One respondent stated that the option of the recipient using its own funds to purchase equipment and then charging the Cooperative Agreement a usage rate is not practical in that States often lack the necessary discretionary funds to purchase property. The respondent said the regulation should be more lenient about equipment purchased with Federal funds. Another respondent said that States should be allowed to purchase equipment with Core Program funds and charge costs to specific sites via a usage rate.

Final Rule: The purchase of equipment with State funds is an option, not a requirement of this regulation. Some States may prefer to acquire equipment in this manner because they do not have to follow EPA procurement, property management, and disposition requirements for property purchased with recipient funds.

Core Program Cooperative Agreements may not be used to

purchase equipment to be used on a site-specific basis, although the use of the equipment for non-site-specific CERCLA implementation activities can be charged to the Core Program. This paragraph has not been changed.

Section 35.6315(c)(3)(iii) Purchase Equipment With CERCLA Funds

Issue: One respondent stated that, in some cases, the purchase of a transportable or mobile treatment system may be the most cost effective means of waste treatment. The respondent suggested that, if a justification can be shown, the purchase of such systems should be allowed.

Final Rule: EPA contends that CERCLA is not a source of capital to purchase large-scale waste treatment equipment. If there is a clear advantage to the purchase of a dedicated mobile treatment system, the purchase of such a system could be pursued under an official deviation from subpart O. This subparagraph has not been changed in response to this issue. However, EPA added a subparagraph to discuss equipment purchases under the Core program.

Section 35.6320 Usage Rate

Section 35.6320(a) Usage Rate Approval and (b) Usage Rate Application

Issue: EPA recognized that these paragraphs of the Interim Final Rule regulate a recipient's contractors as well as the recipient.

Final Rule: These paragraphs are revised to delete references to recipients' contractors. The requirements recipients' contractors must follow are found in § 35.6550. EPA also revised these paragraphs to add references to operable units.

Section 35.6325 Title and EPA Interest in CERCLA-funded Property

Section 35.6325(b)(2)(i) Fixed in-place Equipment

Issue: This subparagraph required EPA to relinquish its interest in the title to fixed-in-place equipment only after the remedy was certified operational and functional.

Final Rule: This subparagraph is revised to provide that EPA no longer has an interest in fixed-in-place equipment once the equipment is installed. Similar revisions have been made in § 35.6815(b).

Section 35.6335 Property Management Standards

Issue: One respondent stated that the interests of cost recovery should not make Superfund property management procedures more stringent on States than other programs and that recipients should be able to follow their own property management standards.

Final Rule: Superfund is a unique Federal program due to the statutory mandate for cost recovery. This aspect of the program requires that the Agency carefully control the purchase of, and accounting for, property. Therefore, EPA is establishing management standards for all CERCLA-funded purchases of property to ensure that minimum requirements are met. If it is able, a State may purchase the property with its own funds and avoid EPA property purchase, management, and disposition requirements.

This section is revised to delete the reference to recipients' contractors. The requirements for recipients' contractors are found in § 35.6550.

Section 35.6340 Disposal of CERCLA-funded Property

Issue: One respondent stated that the property disposition procedure outlined in the regulation "is time-consuming and costly. The government must be receptive to providing staff funding to comply with this procedure."

Final Rule: Reasonable and necessary expenses incurred in the effort to comply with Superfund property disposition requirements are allowed. This funding can be obtained through a site-specific Cooperative Agreement or a multi-site Cooperative Agreement. When such expenses are incurred for property purchased non-site-specifically, funding can be obtained through a Core Program Cooperative Agreement. Therefore, this section of the rule has not been changed.

Section 35.6340(a)(2)(i)(B) Equipment and Section 35.6340(b)(1) Supplies

Issue: One respondent said that the requirement to control disposal of CERCLA-funded property should apply only to an individual piece of equipment or supplies costing over $5,000 because, in most cases, individual items costing less than $5,000 have little or no residual value.

Final Rule: EPA is responsible for ensuring appropriate use of Trust Fund monies. Expenses for equipment and supplies contribute to the total cost-share amount and impact the costs sought from responsible parties. Recipients of Fund monies must reimburse the Fund and satisfy the requirements of § 35.6340 as it stands. These subparagraphs have not been changed.

Real Property Requirements under a Cooperative Agreement

Section § 35.6400 Acquisition and Transfer of Interest

Section 35.6400(a)(2)

Issue: One respondent stated that this subparagraph is in conflict with CERCLA section 104(j)(2) where a State is required to "accept transfer of the [acquired] interest following completion of the remedial action," not, as is stated at § 35.6400(a)(2), "on or before the completion of the response action (emphasis added)." Another stated that EPA should not acquire interest in real property without the prior approval of the State that will have to accept title to such property.

Final Rule: The language at this subparagraph of the rule was written to achieve consistency with 40 CFR part 300 (the NCP). The term "response action" is used in the NCP and this rule because the term "remedial action" at CERCLA section 104(j)(2) does not account for removal activities.

EPA believes that it is not going beyond the statutory language of CERCLA to require a State to accept title to real property acquired by EPA as part of a response action "on or before" completion of that response action, since the option is left open for the State to accept title to the property on completion of the response action. Furthermore, since the State participates in the drafting of the Record of Decision (ROD) and signs the Cooperative Agreement, the State will know at that point what properties are to be acquired by EPA as part of the response action. In addition, while the State must either acquire the interest itself or accept transfer of the interest from EPA, the State may pass title of that interest to another entity (e.g., a political subdivision) if the State so chooses pursuant to § 35.6105(b)(5). This may occur during implementation of the response action or thereafter. For a more detailed discussion of this issue see the preamble of the NCP (55 FR 8666) where § 300.510(f) is discussed. This subparagraph has not been changed in response to the above comments.

Section 35.6550 Procurement System Standards

Section 35.6550(a)(3)(ii)

Final Rule: EPA decided to clarify how much time the recipient must allow between the end of the public notice of the project and the deadline for receipt of bids or proposals. Subparagraph 35.6550(a)(3)(ii) has been deleted. This change makes all recipients subject to

the public notice requirements in § 35.6555(d) which provides, in part, that if its procurement system is not certified, the recipient must allow sufficient time (generally 30 calendar days) between public notice of the project and the deadline for receipt of bids or proposals.

Section 35.6550(a)(6) Completion of Contractual and Administrative Issues

Final Rule: To better present the contractual and administrative requirements for which the recipient is responsible, EPA listed each requirement separately in this subparagraph. No new requirements were added to this section.

Section 35.6550(a)(11) Intergovernmental Agreements

Issue: One respondent requested that EPA specifically include Indian Tribal governments in this subparagraph which encourages intergovernmental agreements for procurement and use of common goods and services. EPA also identified the need to clarify when procurements under intergovernmental agreements are subject to these requirements.

Final Rule: Applicability of this subparagraph to Indian Tribes has been clarified in the Final Rule by removing the exclusive reference to "State and local intergovernmental agreements." This subparagraph also is revised to make it clear that the intergovernmental agreement itself is not subject to the procurement requirements in this subpart, but that any funds expended under the intergovernmental agreement (i.e., pass through funds) are subject to these procurement requirements. This subparagraph also is revised to indicate the circumstances under which EPA procurement requirements do not apply.

Section 35.6550(b) Contractor Standards

Final Rule: Section 35.6550(b) has been revised to reflect changes in EPA procurement procedures, which are the result of findings in the report entitled "A Management Review of the Superfund Program" commissioned by EPA Administrator William K. Reilly in June of 1989.

Section 35.6550(b)(1) Disclosure Requirements Regarding Potentially Responsible Party Relationships

Final Rule: This subparagraph has been revised to read: "The recipient must require each prospective contractor to provide with its bid or proposal:

(i) Information on its financial and business relationship with all PRPs at the site and with the contractor's parent companies, subsidiaries, affiliates, subcontractors, and current clients at the site. Prospective contractors under a Core Program Cooperative Agreement must provide comparable information for all sites within the recipient's jurisdiction. (This disclosure requirement encompasses past financial and business relationships, including services related to any proposed or pending litigation, with such parties.)"

Section 35.6550(b)(2)(i) Conflict of Interest Notification

Final Rule: Because EPA does not have a contractual relationship with the recipient's contractors, this subparagraph is revised to clarify that the recipient is responsible for its contractor's compliance with this requirement.

Section 35.6550(b)(2)(ii) Contract Provisions

Issue: One respondent suggested that the words "or more stringent requirements" be added to the language stipulating clauses to be contained in a contract.

Final Rule: The recipient may include in a contract requirements more stringent than those set forth in this subparagraph. However, EPA will not pay for any additional costs to comply with requirements that go beyond those found in this regulation. EPA has not changed the rule in this respect.

Section 35.6550(b)(4)

Final Rule: This subsection specifies sections of the regulation for which the recipient is responsible for contractor compliance.

Section 35.6555 Competition

Section 35.6555(b)(2) Indian Tribes

Issue: One respondent urged EPA to clarify the phrase "if the project benefits Indians" included in this subparagraph to indicate when it is necessary to comply with the Indian Self-Determination and Education Assistance Act of 1975.

Final Rule: The phrase "if the project benefits Indians" found at § 35.6555(b)(2) of subpart O follows closely the language used in section 7(b) of the Indian Self-Determination and Education Assistance Act. While EPA will implement subpart O consistent with this Federal statute, subpart O is not the appropriate place to discuss in detail the requirements of this Act. Recipients of CERCLA funds should work closely with the appropriate EPA Regional officials to determine the applicability of the Indian Self-Determination and Education Assistance Act to a specific contract or grant. This subparagraph has not been changed in response to this comment.

Section 35.6555(d) Public Notice

Final Rule: The first sentence of this paragraph has been revised to clarify the amount of time that recipients must allow between public notice of the project and the deadline for receipt of bids or proposals. The public notice requirements are now the same for both certified and non-certified recipients.

Section 35.6565 Procurement Methods

Issue: One respondent suggested that it may be appropriate to include in this section an allowance for the use of innovative procurement methods or procedures if a recipient receives the award official's prior written approval, since this allowance was originally provided for in Agency guidance on *Procurement Under Superfund Remedial Cooperative Agreements* and in 40 CFR 33.210(h).

Final Rule: The requirements of the directive cited above and the regulation at 40 CFR part 33 have been superseded by the provisions of 40 CFR 31.36(d), which establishes the allowable methods of procurement. The current regulation identifies only the four procurement methods and does not include innovative approaches discussed in the earlier rule. A recipient who wishes to use a method of procurement that is not identified in 40 CFR 35.6565 should apply to EPA for an official deviation from 40 CFR part 35, subpart O.

Section 35.6580 Contracting With Minority and Women's Business Enterprises (MBE/WBE), Small Businesses, and Labor Surplus Area Firms

Final Rule: This section is revised to encourage recipients to use Core program funds to finance non-site specific activities necessary to comply with the MBE/WBE requirements.

Section 35.6585 Cost and Price Analysis

Section 35.6585(a)(1) Cost Analysis

Issue: One respondent suggested that a recipient should be allowed to conduct a price analysis instead of a cost analysis for all change orders regardless of price.

Final Rule: In this subparagraph, subpart O is implementing the requirements of 40 CFR 31.36(f)(1). A cost analysis is required for change orders because change orders are essentially non-competitive procurements. Therefore, a breakdown of the costs and evaluation of profit is

necessary to ensure that the final cost is reasonable. This subparagraph has not been changed.

Section 35.6590 Bonding and Insurance

Section 35.6590(b) Indemnification

Issue: One respondent asserted that EPA should provide contractor indemnification even if a State has its own indemnification policy.

Final Rule: EPA will agree to indemnify a Response Action Contractor (RAC) working for a State, political subdivision or Federally recognized Indian Tribe, even if that entity has agreed to indemnify the RAC. The proposed contractor indemnification policy, published in the **Federal Register** (54 FR 46012) on October 31, 1989, addresses this issue.

Section 35.6590(c) Accidents and Catastrophic Loss

Final Rule: This paragraph has been revised to clarify that the recipient is responsible for its contractors' compliance with this requirement.

Section 35.6595(b)(4)(ii) Labor Standards

Final Rule: See discussion at § 35.6015(a)(11).

Section 35.6650 Quarterly Progress Reports

Issue: One respondent asserted that the requirement to provide quarterly reports that include fiscal information adds a major workload to the Superfund program. The respondent suggested that EPA do away with the requirement to provide fiscal information in quarterly reports, and said that EPA's fiscal information needs could be satisfied by referencing the Letter of Credit drawdowns.

Final Rule: The quarterly report provisions require only estimated funds spent without specifying the method of estimation. These estimates do not have to be certified by an accounting system. The purpose of requiring this information is to document project progress and associated spending levels for comparison with the approved project plan. The source of quarterly report information should be primarily the State project manager.

Effective project management depends on knowing the level of project completion and the costs associated with that completion level. Monitoring Letter of Credit drawdowns does not provide EPA with the information on technical progress and related expenses needed to monitor progress against the Statement of Work. This section has not been changed in response to this issue, but EPA did revise this section to make it clear that the quarterly progress reports must address the activities as listed in the Statement of Work.

Section 35.6650(b)(1) Content for Pre-remedial, Remedial, Enforcement, and Removal Progress Reports

Final Rule: This subparagraph has been revised to address the quarterly progress reporting requirements for all activities and for Core program and support agency Cooperative Agreements.

Section 35.6665 Procurement Reports

Section 35.6665(a) Reports for the Department of Labor (DOL)

Issue: One respondent stated that reporting each construction contract award that has, or is expected to have, an aggregate value of over $10,000 within a 12-month period to the Department of Labor Regional Office of Compliance is a burdensome requirement.

Final Rule: The procurement reports required by § 35.6665(a) are mandated by the Department of Labor. EPA does not have the authority to remove such a requirement from the rule. This paragraph has not been changed.

Section 35.6665(c) Minority and Women's Business Enterprises (MBE/WBEs)

Issue: One respondent recommended that EPA add the provisions of CERCLA section 105(f) to subpart O.

Final Rule: (This paragraph is renumbered § 35.6665(b).) The requirements of CERCLA section 105(f) establish that the President must consider the availability of qualified minority firms in the award of contracts and shall include information on the participation of minorities in such contracts in any annual reports to Congress. The first intention of CERCLA section 105(f) is met by the requirement in § 35.6580 regarding the use of MBE firms. The second intention is implemented in the revised subparagraph § 35.6665(b)(1) and the new subparagraph § 35.6665(b)(2) of this Final Rule.

Section 35.6670 Financial Reports

Section 35.6670(b)(2)(i) Reporting Frequency

Issue: One respondent suggested that subpart O should allow flexibility regarding the filing dates for annual Financial Status Reports (FSRs).

Final Rule: This subparagraph has been revised to clarify when FSRs are due. The substance of the requirement has not changed.

Records Requirements under a Cooperative Agreement

Section 35.6700 Project Records

Final Rule: EPA realizes that the relationship between the project records addressed in this section and the administrative record required by section 113 of CERCLA was not clearly defined in the Interim Final Rule. To distinguish between the official administrative record and the project record requirements in this subpart, EPA added a sentence to this section to clarify that subpart O does not address the official administrative record. This paragraph also has been changed to address maintaining records by operable unit, as applicable.

Section 35.6700(c) Property Records

Issue: One respondent asserted that the requirements of this paragraph exceed the requirements in 40 CFR part 31, and are not necessary for cost recovery.

Final Rule: The property record requirements in this subpart, although they do exceed the requirements in part 31, are necessary to ensure the proper administration of the Trust Fund and to facilitate cost recovery. Development of property records systems to comply with these requirements are a fundable cost under a Core Program Cooperative Agreement.

Section 35.6705 Records Retention

Issue: Several respondents asserted that EPA should pay for record storage costs, and that other storage media should be addressed, e.g., laser storage. Others said that if EPA is going to allow microfilming of records, recipients should not have to get EPA approval to destroy records.

Final Rule: EPA recognizes that the cost of maintaining records can be very high. While the project is underway, the recipient may charge site-specific storage costs to the site. Recipients may use Core program funds to finance records storage after the project is complete. Recipients should consider adding these costs to their indirect cost rates. Even though microform is available, EPA still needs to approve the destruction of any original records. This is necessary so as not to jeopardize cost recovery activity. This section has not been changed in response to the above comments.

Section 35.6705(b) Length of Retention Period

Issue: One respondent stated that the ten-year record retention requirement is excessive, and that recipients should be

allowed to give records to EPA when the recipient no longer needs them. Another respondent recommended that EPA add a time frame to the rule within which audits must take place after submission of final FSRs; otherwise, EPA could effectively increase the retention period.

Final Rule: EPA revised this paragraph to state that the 10-year record retention period is required unless the EPA Award Official determines otherwise. This allows for circumstances when EPA knows that no PRP is forthcoming and that records retention is not necessary.

Superfund State Contracts

Section 35.6800 General

Issue: One respondent stated that requiring executed SSCs before EPA initiates a remedial action delays the start of such actions up to two months.

Final Rule: When the State is not the lead agency for a response action, the State must still provide its CERCLA section 104(c) assurances in an SSC before EPA can obligate Trust Fund monies for the remedial action. Delays while an SSC is being developed are a management problem that should be addressed earlier in the process. Procurement activities through the bid process and up to the contract award may be considered part of remedial design rather than remedial action. Therefore, all such actions can proceed before the SSC is in place. This section has not been changed in response to this comment.

Section 35.6805 Contents of an SSC

Issue: Subpart O stresses that the cost-share provisions of the SSC must include an estimate of the total project costs and payment terms as negotiated by the signatories of the SSC. One respondent noted that, in some cases, the SSC may need to be amended during remedial action to reflect actual costs (See § 35.6805(j)(3)). The respondent recommended the inclusion of a reconciliation clause in this section to ensure that the SSC reflects actual costs.

One respondent objected to the language in subparagraph § 35.6805(i)(4) and asserted that EPA should be responsible for securing and controlling site access.

Final Rule: Section 35.6805 has been expanded and revised to clarify the requirements under an SSC, and now contains at § 35.6805(k) a requirement for a reconciliation provision.

In addition, § 35.6805(j) "Cost-share conditions" has been revised to clarify State cost-share requirements. Previous negotiations of State cost-share obligations sometimes included EPA's own intramural costs as part of the total project cost to be shared by the State. However, it was never EPA's intention that States share project costs to the same extent as PRPs (for whom the term "total project cost" means all costs incurred at the site, including EPA's intramural costs). States are heretofore required to cost-share only those direct, extramural costs incurred at the site.

Finally, EPA's policy has been that States are expected to obtain access to sites for both State-lead and Federal-lead activities in order to expedite the response process. EPA will acquire site access only if the State cannot do so. Section 104(e)(3) of CERCLA authorizes EPA and its representatives, including contractors for CERCLA-funded response activities, to enter "any vessel, facility, establishment, or other place or property where any hazardous substance" may be or has been found, or where entry is needed to determine the need for response or to effectuate a response action under CERCLA. Consistent with section 104(c) of CERCLA, it has been EPA's policy that States acting under a Superfund Cooperative Agreement or an SSC may also use this authority. States may seek this authority through either a lead or support agency Cooperative Agreement. In the absence of such agreements, States must use their own authorities to gain access.

Section 35.6815 Aministrative Requirements

Section 35.6815(d)(2) Political Subdivision-lead

Issue: Some States have requested that the rule require political subdivisions that have the lead in a remedial action to provide the State with a copy of all reports which the political subdivision is required to submit to EPA in accordance with the requirements of the Cooperative Agreement.

Final Rule: EPA concurs. The first sentence of this subparagraph has been revised to require the political subdivision to submit to the State a copy of all reports that the political subdivision is required to submit to EPA.

Core Program Cooperative Agreements

Section 35.6850 Eligibility for Core Program Cooperative Agreements

Issue: Some respondents requested clarification of the terms of eligibility for Core Program Cooperative Agreements.

Final Rule: (This section is renumbered § 35.6215.) States and Indian Tribes that qualify as States pursuant to the requirements of the NCP (40 CFR part 300) may apply for funding for non-site-specific activities through Core Program Cooperative Agreements. EPA will enter into only one Core Program Cooperative Agreement per State or Indian Tribe, and only with the single agency for CERCLA response designated by the State Governor or by the governing body for the Indian Tribe.

To involve other essential parties to CERCLA response, the recipient may enter into intergovernmental agreements with other State agencies or non-State entities. Examples of these parties include the State Attorney General, which may provide legal and enforcement support during CERCLA implementation, or political subdivisions, which may ultimately assume responsibility for CERCLA implementation on behalf of the State. The recipient is responsible for disbursing funds to others who may receive benefits from the award. Intergovernmental agreements are not subject to EPA approval, but procurements under these agreements must comply with the requirements of 40 CFR part 31 and this subpart.

This section is revised to clarify the terms of eligibility for Core Program Cooperative Agreements.

Section 35.6855 General

Issue: Several respondents requested clarification both on the activities that are eligible for Core Program funding and on the funding levels for awards. Some respondents felt that the previous limitations on awards were arbitrary.

Final Rule: (This section is renumbered § 35.6220.) The Core Program provides a valuable tool with which EPA can support CERCLA implementation activities performed by States and Indian Tribes. EPA agrees that additional detail is needed on the implementation of the Core Program. Therefore, EPA is clarifying each section in the rule, where appropriate, to address the Core Program, and § 35.6225 is being added to provide more information on activities that are eligible for funding.

EPA intends that the larger, more flexible Core Program offered by this Final rule will help the States to progress toward fully operational programs of their own. As noted above, each State Core Program CA will be negotiated separately with the Region. However, States requesting increased funding must demonstrate tangible and continual improvement in their hazardous substance response activities. That is, Core Program funding should supplement, not supplant, States' financial commitment to their own

hazardous substance response programs.

In the original EPA guidance issued on Core Program funding in 1987, several criteria were provided for determining the level of awards. Since then, EPA and the States have gained experience in implementing the Core Program. As a result, the Agency is revising the award criteria to establish clearer priorities for funding and to assist States and Indian Tribes in assuming responsibility for CERCLA response.

All non-site-specific activities that are necessary to support a recipient's Superfund program are eligible for Core Program funding. Activities will be funded based on the availability of funds and coordination of priorities between EPA and the State or Indian Tribe. A Core Program Cooperative Agreement must be a separate agreement and may not be written as part of a pre-remedial, site-specific, or support agency Cooperative Agreement.

Section 35.6860 Application Requirements

Final Rule: (This section is renumbered § 35.6230.) This section has been revised to make the application requirements for Core Program Cooperative Agreements consistent, where appropriate, with those for other Cooperative Agreements.

Section 35.6860(c) A Schedule of Proposed Project and Budget Periods

Issue: Recipients of Core Program Cooperative Agreements have expressed frustration with the annual budget periods and have requested that EPA lengthen the allowed budget period to provide for multi-year awards. Respondents have asserted that a multi-year approach would maximize resources and increase the ability to manage Superfund activities.

Final Rule: (This paragraph is renumbered § 35.6230(c).) EPA recognizes that one-year budget periods may limit the recipient's ability to maximize its resources and may not encourage sufficiently long-term planning for CERCLA implementation activities. In an independent information gathering effort, EPA has also identified State difficulties in using Core Program Cooperative Agreements to hire and train staff given the annual project and budget periods. Although multi-year project periods have been allowed, multi-year budget periods have not.

As a result, the Agency is broadening the scope of the regulatory requirements in § 35.6230 of this rule to allow both multi-year project and budget periods. It is EPA's intent that this revision will encourage the development of longer term strategies and planning by recipients for their CERCLA involvement. In developing applications for Core Program Cooperative Agreements, recipients should begin the planning process well in advance of the funding needs for both one-year and multi-year awards. In particular, the development of the Statement of Work for multi-year projects should be addressed during annual consultations conducted between recipients and EPA pursuant to § 300.515(h)(1) of the NCP. These discussions provide an appropriate forum for the coordination of EPA and recipient priorities that can facilitate longer term planning and can enable participation in remedial response and enforcement actions.

Once a State has entered into a Core Program Cooperative Agreement with EPA, the agreement may be amended each Federal fiscal year to add funds and to cover subsequent work under the State's Core Program. If Core Program funds remain at the end of a budget period, the funds can be carried over to the immediately succeeding budget period.

Section 35.6865 Quarterly Progress Reports

Final Rule: Requirements for quarterly progress reports under the Core Program have been incorporated into reporting discussions throughout the rule, as applicable. Therefore, the Final Rule does not include a separate section for quarterly progress reports under the Core Program.

Section 35.6870 Cost Sharing

Issue: In implementing the Core Program to date, EPA has received comment from recipients that increased funding for non-site-specific activities could substantially increase their involvement in all phases of CERCLA response activities. One comment on the Interim Final Rule expressed concern that the original funding level for Core Program Cooperative Agreements was arbitrary.

Final Rule: (This section is renumbered § 35.6235.) The rationale for Core Program funding levels provided to date was contained in existing Agency guidance and was based on the estimated costs to address basic program functions discussed in the guidance. The Agency agrees, however, that increased funding through the Core Program could facilitate the recipient's abilities to support a Superfund program and to assume increased responsibility for CERCLA co-implementation. As a result, EPA is not establishing a limit on Core Program Cooperative Agreement awards in this rule so that higher levels of funding can be awarded based on the availability of funds and the recipient's program needs.

In response to comments on the Interim Final Rule, EPA has decided to raise the cost sharing requirements for Core Program CAs from 5 to 10 percent, and has revised § 35.6235 accordingly. This increase in the State match is consistent with the 10 percent State match required at CERLA section 104(c)(3). As with other Cooperative Agreement cost sharing requirements, the State may use in-kind services to meet its share of payments under the Core Program.

Similar to States, Indian Tribes must provide the 10 percent cost sharing match for Core Program Cooperative Agreements. According to CERCLA, Indian Tribes are exempt from making any of the CERCLA section 104(c)(3) assurances, which includes cost sharing. However, the cost sharing requirements described in the statute refer explicitly to remedial action only. Since the Core Program does not include funding for any site-specific activities or remedial actions, it is not included as an exemption as part of the CERCLA section 104(c)(3) assurances.

Section 35.6910 Support Agency Cooperative Agreement Requirements

Issue: Some States have attempted to provide the assurances required by § 35.6810 in a support agency Cooperative Agreement.

Final Rule: (This section is renumbered § 35.6250.) The support agency Cooperative Agreement is not the appropriate mechanism for documenting CERCLA section 104 assurances prior to remedial action at a site. Pursuant to 40 CFR 35.6800 and 35.6805, the Superfund State Contract is the required mechanism for documenting assurances prior to the initiation of a Federal- or political subdivision-lead remedial action. These assurances may not be provided in a support agency Cooperative Agreement. The SSC should reference the support agency Cooperative Agreement which is in place concurrently with the SSC to facilitate tracking of expenditures and payments.

This section defines the requirements regarding the administration of a support agency Cooperative Agreement. The Interim Final Rule included an editorial error in a cross-reference to the reporting requirements that the recipient of a support agency Cooperative Agreement must follow. The Final Rule has been revised accordingly.

Issue: EPA requires the recipient to attribute costs to specific sites and

activities for Letter of Credit drawdown purposes. Often recipients do not know beforehand the cost of support agency activities at a particular site, making it extremely difficult to determine accurately the funds needed for the Cooperative Agreement budget estimate. Some recipients would prefer to be able to budget the funds non-site-specifically and then draw down and report the expenditure of these funds on a site-specific basis.

Final Rule: With award official approval, and with the exception of remedial action Cooperative Agreements, applicants may submit non-site-specific budget estimates, so long as actual expenditures are drawn down site-specifically and provide sufficient documentation for cost recovery actions.

Also, EPA has revised § 35.6155 to include a reference to Indian Tribes and political subdivisions, and to indicate that some subparagraphs of § 35.6105(a) do not apply to enforcement Cooperative Agreements. EPA has added § 35.6155(c) to indicate the assurances that the applicant for an enforcement Cooperative Agreement must provide before its application can qualify for review by EPA.

IV. Supporting Information

List of Subjects in 40 CFR Part 35

Accounting, Administrative practice and procedures, Financial administration, Grant programs (Cooperative Agreements and Superfund State Contracts), Government procurement requirements, Property requirements, Reporting and recordkeeping requirements, Superfund.

V. Impact Analyses

A. Executive Order 12291

Executive Order No. 12291 requires that regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget (OMB). According to Executive Order No. 12291, "major" rules are regulations that are likely to result in:

(1) An annual adverse (cost) effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government, or geographical regions; or

(3) Significant adverse effects on the competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not affect the amount of funds provided in the Superfund program, but rather modifies and updates administrative and procedural requirements. EPA does not believe that the rule will have an annual economic impact of $100 million or more, will increase costs or prices, or will adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. For this reason, EPA has determined that this is not a major rule within the meaning of the Order, and therefore no formal Regulatory Impact Analysis is necessary. This final rule was submitted to the Office of Management and Budget for its review as required by Executive Order 12291.

B. Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities. EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because the requirements in this regulation apply only to States, political subdivisions thereof, and Indian Tribes for administering Superfund response actions.

C. Paperwork Reduction Act

Sections 35.6055; 35.6105; 35.6120; 35.6270; 35.6300; 35.6315; 35.6320; 35.6340; 35.6550; 35.6585; 35.6650; 35.6655; 35.6660; 35.6665; 35.6670; 35.6700; 35.6705; 35.6710; 35.6805; 35.6815; and 35.6230 of this rule contain collection-of-information requirements. The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the "Paperwork Reduction Act," 44 U.S.C. 3501 *et seq.* and assigned OMB control numbers 2010–0020. An Information Collection Request document has been prepared by EPA (ICR No. 1487), and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St. SW. (PM–223); Washington, DC 20460, or by calling (202) 382–2740.

Public reporting burden for this collection of information is estimated to average 81 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, PM–223, 401 M St. SW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Dated: May 23, 1990.

William K. Reilly,

Administrator.

Accordingly, the Administrator amends chapter I, part 35 of title 40 of the Code of Federal Regulations by revising subpart O to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

* * * * *

Subpart O—Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

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Subpart O—Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

Authority: 42 U.S.C. 9601 *et seq.*

General

§ 35.6000 Authority.

This regulation is issued under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*, Pub. L. 96-510, December 11, 1980, otherwise referred to as "CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, October 17, 1986; 100 Stat. 1613, otherwise referred to as "SARA").

All references to CERCLA within this regulation are meant to indicate CERCLA, as amended by SARA.

§ 35.6005 Purpose and scope.

(a) This regulation codifies recipient requirements for administering CERCLA-funded Cooperative Agreements. This regulation also codifies requirements for administering Superfund State Contracts (SSCs) for non-State-lead remedial responses undertaken pursuant to section 104 of CERCLA.

(b) The requirements in this regulation do not apply to Technical Assistance Grants (TAGs) or to CERCLA research and development grants, including the Superfund Innovative Technology Evaluation (SITE) Demonstration Program.

(c) 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," establishes consistency and uniformity among Federal agencies in the administration of grants and Cooperative Agreements to State, local, and Indian Tribal governments. For CERCLA-funded Cooperative Agreements, this subpart supplements the requirements contained in part 31 for States, political subdivisions thereof, and Indian Tribes. This regulation references those sections of part 31 that are applicable to CERCLA-funded Cooperative Agreements.

(d) Superfund monies for remedial actions cannot be used by recipients for Federal facility cleanup activities. When a cleanup is undertaken by another Federal entity, the State, political subdivision or Indian Tribe can pursue funding for its involvement in response activities from the appropriate Federal entity.

§ 35.6010 Eligibility.

This regulation applies to States, political subdivisions and Indian Tribes. Indian Tribes are only eligible to receive Superfund Cooperative Agreements or Superfund State Contracts when they are Federally recognized, and when they meet the criteria set forth in § 300.515(b) of the NCP. Although section 126 of CERCLA provides that the governing body of an Indian Tribe shall be afforded substantially the same treatment as a State, in this subpart Indian Tribes are not included in the definition of State in order to clarify those requirements with which Indian Tribes must comply and those with which they need not comply.

§ 35.6015 Definitions.

(a) As used in this subpart, the following words and terms shall have the meanings set forth below:

(1) *Activity.* A set of CERCLA-funded tasks that makes up a segment of the sequence of events undertaken in determining, planning, and conducting a response to a release or potential release of a hazardous substance. These include Core Program, pre-remedial (i.e. preliminary assessments and site inspections), support agency, remedial investigation/feasibility studies,

remedial design, remedial action, removal, and enforcement activities.

(2) *Allowable costs.* Those project costs that are: Eligible, reasonable, necessary, and allocable to the project; permitted by the appropriate Federal cost principles; and approved by EPA in the Cooperative Agreement and/or Superfund State Contract.

(3) *Architectural or engineering (A/E) services.* Consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the recipient is located.

(4) *Award official.* The EPA official with the authority to execute Cooperative Agreements and Superfund State Contracts (SSCs) and to take other actions authorized by EPA Orders.

(5) *Budget period.* The length of time EPA specifies in a Cooperative Agreement during which the recipient may expend or obligate Federal funds.

(6) *CERCLA.* The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601–9657, Pub. L. 96–510, Dec. 11, 1980), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, Oct. 17, 1986; 100 Stat. 1613).

(7) *Change order.* A written order issued by a recipient, or its designated agent, to its contractor authorizing an addition to, deletion from, or revision of, a contract, usually initiated at the contractor's request.

(8) *Claim.* A demand or written assertion by a contractor seeking, as a matter of right, changes in contract duration, costs, or other provisions, which originally have been rejected by the recipient.

(9) *Closeout.* The final EPA or recipient actions taken to assure satisfactory completion of project work and to fulfill administrative requirements, including financial settlement, submission of acceptable required final reports, and resolution of any outstanding issues under the Cooperative Agreement and/or Superfund State Contract.

(10) *Community Relations Plan (CRP).* A management and planning tool outlining the specific community relations activities to be undertaken during the course of a response. It is designed to provide for two-way communication between the affected community and the agencies responsible for conducting a response action, and to assure public input into the decision-making process related to the affected communities.

(11) *Construction.* Erection, building, alteration, repair, remodeling, improvement, or extension of buildings, structures or other property.

(12) *Contract.* A written agreement between an EPA recipient and another party (other than another public agency) or between the recipient's contractor and the contractor's first tier subcontractor.

(13) *Contractor.* Any party to whom a recipient awards a contract.

(14) *Cooperative Agreement.* A legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose in which substantial EPA involvement is anticipated during the performance of the project.

(15) *Core Program Cooperative Agreement.* A Cooperative Agreement that provides funds to a State or Indian Tribe to conduct CERCLA implementation activities that are not assignable to specific sites, but are intended to support a State's ability to participate in the CERCLA response program.

(16) *Cost analysis.* The review and evaluation of each element of contract cost to determine reasonableness, allocability, and allowability.

(17) *Cost share.* The portion of allowable project costs that a recipient contributes toward completing its project (i.e., non-Federal share, matching share).

(18) *Equipment.* Tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

(19) *Excess property.* Any property under the control of a Federal agency that is not required for immediate or foreseeable needs and thus is a candidate for disposal.

(20) *Fair market value.* The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value is the price in cash, or its equivalent, for which the property would have been sold on the open market.

(21) *Health and safety plan.* A plan that specifies the procedures that are sufficient to protect on-site personnel and surrounding communities from the physical, chemical, and/or biological hazards of the site. The health and safety plan outlines:

(i) Site hazards;

(ii) Work areas and site control procedures;

(iii) Air surveillance procedures;

(iv) Levels of protection;

(v) Decontamination and site emergency plans;

(vi) Arrangements for weather-related problems; and

(vii) Responsibilities for implementing the health and safety plan.

(22) *In-kind contribution.* The value of a non-cash contribution (generally from third parties) to meet a recipient's cost sharing requirements. An in-kind contribution may consist of charges for real property and equipment or the value of goods and services directly benefiting the CERCLA-funded project.

(23) *Indian Tribe.* As defined by section 101(36) of CERCLA, any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(24) *Intergovernmental Agreement.* Any written agreement between units of government under which one public agency performs duties for or in concert with another public agency using EPA assistance. This includes substate and interagency agreements.

(25) *Lead agency.* The Federal agency, State agency, political subdivision, or Indian Tribe that has primary responsibility for planning and implementing a response action under CERCLA.

(26) *Minority Business Enterprise (MBE).* A business which is:

(i) Certified as socially and economically disadvantaged by the Small Business Administration;

(ii) Certified as a minority business enterprise by a State or Federal agency; or

(iii) An independent business concern which is at least 51 percent owned and controlled by minority group member(s). A minority group member is an individual who is a citizen of the United States and one of the following:

(A) Black American;

(B) Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America);

(C) Native American (American Indian, Eskimo, Aleut, native Hawaiian); or

(D) Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian subcontinent).

(27) *National Priorities List (NPL).* EPA's list of the most serious

uncontrolled or abandoned hazardous waste sites identified for possible long-term remedial action under Superfund. A site must be on the NPL to receive money from the Trust Fund for remedial action. The list is based primarily on the score a site receives from the Hazard Ranking System.

(28) *Operable unit.* A discrete action, as described in the Cooperative Agreement or SSC, that comprises an incremental step toward comprehensively addressing site problems. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site.

(29) *Operation and maintenance (O&M).* Measures required to maintain the effectiveness of response actions.

(30) *Personal property.* Property other than real property. It includes both supplies and equipment.

(31) *Political subdivision.* The unit of government that the State determines to have met the State's legislative definition of a political subdivision.

(32) *Potentially Responsible Party (PRP).* Any individual(s), or company(ies) identified as potentially liable under CERCLA for cleanup or payment for costs of cleanup of Hazardous Substance sites. PRPs may include individual(s), or company(ies) identified as having owned, operated, or in some other manner contributed wastes to Hazardous Substance sites.

(33) *Price analysis.* The process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis determines the reasonableness of the proposed contract price based on adequate price competition, previous experience with similar work, established catalog or market price, law, or regulation.

(34) *Profit.* The net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. (Because this definition of profit is based on applicable Federal cost principles, it may vary from many firms' definition of profit, and may correspond to those firms' definition of "fee.")

(35) *Project.* The activities or tasks EPA identifies in the Cooperative Agreement and/or Superfund State Contract.

(36) *Project manager.* The recipient official designated in the Cooperative Agreement or SSC as the program contact with EPA.

(37) *Project officer.* The EPA official designated in the Cooperative Agreement as EPA's program contact with the recipient. Project officers are responsible for monitoring the project.

(38) *Project period.* The length of time EPA specifies in the Cooperative Agreement and/or Superfund State Contract for completion of all project work. It may be composed of more than one budget period.

(39) *Quality Assurance Project Plan.* A written document, associated with remedial site sampling, which presents in specific terms the organization (where applicable), objectives, functional activities, and specific quality assurance and quality control activities and procedures designed to achieve the data quality objectives of a specific project(s) or continuing operation(s).

(40) *Real property.* Land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

(41) *Recipient.* Any State, political subdivision thereof, or Indian Tribe which has been awarded and has accepted an EPA Cooperative Agreement.

(42) *Services.* A recipient's in-kind or a contractor's labor, time, or efforts which do not involve the delivery of a specific end item, other than documents (e.g., reports, design drawings, specifications). This term does not include employment agreements or collective bargaining agreements.

(43) *Small business.* A business as defined in section 3 of the Small Business Act, as amended (15 U.S.C. 632).

(44) *State.* The several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of Northern Marianas, and any territory or possession over which the United States has jurisdiction.

(45) *Statement of Work (SOW).* The portion of the Cooperative Agreement application and/or Superfund State Contract that describes the purpose and scope of activities and tasks to be carried out as a part of the proposed project.

(46) *Subcontractor.* Any first tier party that has a contract with the recipient's prime contractor.

(47) *Superfund State Contract (SSC).* A joint, legally binding agreement between EPA and another party(s) to obtain the necessary assurances before an EPA-lead remedial action or any political subdivision-lead activities can begin at a site, and to ensure State or Indian Tribe involvement as required under CERCLA section 121(f).

(48) *Supplies.* All tangible personal property other than equipment as defined in this subpart.

(49) *Support agency.* The agency that furnishes necessary data to the lead agency, reviews response data and documents, and provides other assistance to the lead agency.

(50) *Task.* An element of a Superfund response activity identified in the Statement of Work of a Superfund Cooperative Agreement or a Superfund State Contract.

(51) *Title.* The valid claim to property which denotes ownership and the rights of ownership, including the rights of possession, control, and disposal of property.

(52) *Unit acquisition cost.* The net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(53) *Value engineering.* A systematic and creative analysis of each contract term or task to ensure that its essential function is provided at the overall lowest cost.

(54) *Women's Business Enterprise (WBE).* A business which is certified as a Women's Business Enterprise by a State or Federal agency, or which meets the following definition. A Women's Business Enterprise is an independent business concern which is at least 51 percent owned by a woman or women who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or women shall be made without regard to community property laws.

(b) Those terms not defined in this section shall have the meanings set forth in section 101 of CERCLA, 40 CFR part 31 and 40 CFR part 300 (the National Contingency Plan).

§ 35.6020 Other statutory provisions.

The recipient must comply with the Federal laws described in 40 CFR 31.13, Principal Environmental Statutory Provisions; Public Law 98–473, as implemented in the Department of Interior, Bureau of Indian Affairs, regulation at 25 CFR part 20; 25 CFR part 20 and with other applicable statutory provisions.

§ 35.6025 Deviation from this subpart.

On a case-by-case basis, EPA will consider requests for an official deviation from the non-statutory provisions of this regulation. Refer to the requirements regarding additions and exceptions described in 40 CFR 31.6 (b), (c), and (d).

Pre-Remedial Response Cooperative Agreements

§ 35.6050 Eligibility for pre-remedial Cooperative Agreements.

States, political subdivisions, and Indian Tribes may apply for pre-remedial response Cooperative Agreements.

§ 35.6055 State-lead pre-remedial Cooperative Agreements.

(a) To receive a State-lead pre-remedial Cooperative Agreement, the applicant must submit an "Application for Federal Assistance" (SF–424) for non-construction programs. Applications for additional funding need include only the revised pages. The application must include the following:

(1) *Budget sheets* (SF–424A);

(2) *A Project narrative statement,* including the following:

(i) *A list of sites* at which the applicant proposes to undertake pre-remedial tasks. If the recipient proposes to revise the list, the recipient may not incur costs on a new site until the project officer has approved the site;

(ii) *A Statement of Work (SOW)* which must include a detailed description, by task, of activities to be conducted, the projected costs associated with each task, the number of products to be completed, and a quarterly schedule indicating when these products will be submitted to EPA;

(iii) *A schedule of deliverables.*

(3) *Drug-Free Workplace Certification.* The applicant must certify (40 CFR part 32, subpart F) that it is in compliance with the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D), which requires applicants to certify in writing that they will provide a drug-free workplace. The applicant must follow the requirements contained in the OMB notice entitled "Government-wide Implementation of the Drug-Free Workplace Act of 1988" published January 31, 1989.

(4) *Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700–49).* The applicant must certify that it is in compliance with Executive Order 12549 and 40 CFR part 32.

(5) *Procurement Certification.* The applicant must evaluate its own procurement system to determine if the system meets the intent of the requirements of this subpart. After evaluating its procurement system, the applicant or recipient must complete the "Procurement System Certification" (EPA Form 5700–48) and submit the form to EPA with its application.

(6) *Anti-Lobbying Certification.* The applicant must certify (40 CFR part 34, appendix A) that no appropriated funds will be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with any Federal award in excess of $100,000, in accordance with section 319 of Public Law 101–121. The applicant must follow the requirements in the Interim Final Rule entitled, "New Restrictions on Lobbying" published on February 26, 1990.

(b) *Pre-remedial Cooperative Agreement requirements.* The recipient must comply with all terms and conditions in the Cooperative Agreement, and with the following requirements:

(1) *Health and safety plan.* (i) Before beginning field work, the recipient must have a health and safety plan in place providing for the protection of on-site personnel and area residents. This plan need not be submitted to EPA, but must be made available to EPA upon request.

(ii) The recipient's health and safety plan must comply with Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120, entitled "Hazardous Waste Operations and Emergency Response," unless the recipient is an Indian Tribe which is exempt from OSHA requirements.

(2) *Quality assurance.* (i) The recipient must comply with the quality assurance requirements described in 40 CFR 31.45.

(ii) The recipient must have an EPA-approved non-site-specific quality assurance plan in place before beginning field work. The recipient must submit the plan to EPA in adequate time (generally 45 days) for approval to be granted before beginning field work.

(iii) The quality assurance plan must comply with the requirements regarding split sampling described in section 104(e)(4)(B) of CERCLA, as amended.

§ 35.6060 Political subdivision-lead pre-remedial Cooperative Agreements.

(a) If the Award Official determines that a political subdivision's lead involvement in pre-remedial activities would be more efficient, economical and appropriate than that of a State, based on the number of sites to be addressed and the political subdivision's history of program involvement, a pre-remedial Cooperative Agreement may be awarded under this section.

(b) The political subdivision must comply with all of the requirements described in § 35.6055 of this subpart.

(c) The Award Official may require a three-party Superfund State Contract for pre-remedial activities.

(d) If the preliminary assessment/site investigation (PA/SI) shows that listing the site on the NPL is necessary, the political subdivision must enter into a three-party Superfund State Contract before any remedial activities begin.

§ 35.6070 Indian Tribe-lead pre-remedial Cooperative Agreements.

The Indian Tribe must comply with all of the requirements described in § 35.6055 of this subpart, except for the intergovernmental review requirements included in the "Application for Federal Assistance" (SF–424).

Remedial Response Cooperative Agreements

§ 35.6100 Eligibility for remedial Cooperative Agreements.

States, Indian Tribes, and political subdivisions may apply for remedial response Cooperative Agreements.

§ 35.6105 State-lead remedial Cooperative Agreements.

To receive a State-lead remedial Cooperative Agreement, the applicant must submit the following items to EPA:

(a) *Application form,* as described in § 35.6055(a) of this subpart, accompanied by the following:

(1) *Budget sheets* (SF–424A) displaying costs by site, activity and operable unit, as applicable;

(2) *A Project narrative statement,* including the following:

(i) *A site description,* including a discussion of the location of each site, the physical characteristics of each site (site geology and proximity to drinking water supplies), the nature of the release (contaminant type and affected media), past response actions at each site, and response actions still required at each site;

(ii) *A site-specific Statement of Work (SOW),* including estimated costs per task, and a standard task to ensure that a sign is posted at the site providing the appropriate contacts for obtaining information on activities being conducted at the site, and for reporting suspected criminal activities;

(iii) *A statement designating a lead site project manager* among appropriate State offices. This statement must demonstrate that the lead State agency has conducted coordinated planning of response activities with other State

agencies. The statement must identify the name and position of those individuals who will be responsible for coordinating the State offices;

(iv) *A site-specific Community Relations Plan* or an assurance that field work will not begin until one is in place. The Regional community relations coordinator must approve the Community Relations Plan before the recipient begins field work. The recipient must comply with the community relations requirements described in EPA policy and guidance, and in the National Contingency Plan (NCP);

(v) *A site-specific health and safety plan*, or an assurance that the applicant will have a final plan before starting field work. Unless specifically waived by the award official, the applicant must have a site-specific health and safety plan in place providing for the protection of on-site personnel and area residents. The site-specific health and safety plan must comply with Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120, entitled "Hazardous Waste Operations and Emergency Response," unless the recipient is an Indian Tribe exempt from OSHA requirements;

(vi) *Quality assurance*—(A) *General.* If the project involves environmentally related measurements or data generation, the recipient must comply with the requirements regarding quality assurance described in 40 CFR 31.45.

(B) *Quality assurance plan.* The applicant must have a separate quality assurance project plan and/or sampling plan for each site to be covered by the Cooperative Agreement. The applicant must submit the quality assurance project plan and sampling plan, which incorporates results of any site investigation performed at that site, to EPA with its Cooperative Agreement application. However, at the option of the EPA award official with program concurrence, the applicant may submit with its application a schedule for developing the detailed site-specific quality assurance plan (generally 45 days before beginning field work). Field work may not begin until EPA approves the site-specific quality assurance plan.

(C) *Split sampling.* The quality assurance plan must comply with the requirements regarding split sampling described in section 104(e)(4)(B) of CERCLA, as amended.

(vii) *A schedule of deliverables* to be prepared during response activities.

(3) *Drug-Free Workplace Certification.* The applicant must certify (40 CFR part 32, subpart F) that it is in compliance with the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D), which requires applicants to certify in writing that they will provide a drug-free workplace.

(4) *Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700–49).* The applicant must certify that it is in compliance with Executive Order 12549 and 40 CFR part 32.

(5) *Procurement Certification.* The applicant must evaluate its own procurement system to determine if the system meets the intent of the requirements of this subpart. After evaluating its procurement system, the applicant or recipient must complete the "Procurement System Certification" (EPA Form 5700–48) and submit the form to EPA with its application.

(6) *Anti-Lobbying Certification.* The applicant must certify (40 CFR part 34, appendix A) that no appropriated funds will be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with any Federal award in excess of $100,000, in accordance with section 319 of Public Law 101–121. The applicant must follow the requirements in the Interim Final Rule entitled, "New Restrictions on Lobbying" published on February 26, 1990.

(b) *CERCLA Assurances.* Before a Cooperative Agreement for remedial action can be awarded, the State must provide EPA with written assurances as specified below.

(1) *Operation and maintenance.* The State must provide an assurance that it will assume responsibility for the operation and maintenance (O&M) of implemented CERCLA-funded remedial actions for the expected life of each such action. In addition, even if a political subdivision is designated as being responsible for O&M, the State must guarantee that it will assume any or all O&M activities in the event of default by the political subdivision.

(2) *Cost sharing.* The State must provide assurances for cost sharing as follows:

(i) *Ten percent.* Where a facility was privately operated, whether privately or publicly owned, at the time of disposal, the State must provide 10 percent of the cost of the remedial action, if CERCLA-funded.

(ii) *Fifty percent.* Where a facility was publicly operated by a State or political subdivision at the time of disposal of hazardous substances at the facility, the State must provide at least 50 percent of the cost of removal, remedial planning, and remedial action if the remedial action is CERCLA-funded.

(3) *Twenty-year waste capacity.* The State must assure EPA of the availability of hazardous waste treatment or disposal facilities within and/or outside the State that comply with subtitle C of the Solid Waste Disposal Act and that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of the response agreement. A remedial response action cannot be funded unless this assurance is provided consistent with § 300.510 of the NCP. EPA will determine whether the State's assurance is adequate.

(4) *Off-site storage, treatment, or disposal.* If off-site storage, destruction, treatment, or disposal is required, the State must assure the availability of a hazardous waste disposal facility that is in compliance with subtitle C of the Solid Waste Disposal Act and is acceptable to EPA. The lead agency of the State must provide the notification required at § 35.6120, if applicable.

(5) *Real property acquisition.* If EPA determines in the remedy selection process that an interest in real property must be acquired in order to conduct a response action, such acquisition may be funded under a Cooperative Agreement. If the State, or a political subdivision thereof, is unable to acquire the real property interest, the State must assure EPA that it will accept transfer of such interest, including any interest in real property that is acquired to ensure the reliability of institutional controls restricting the use of that property. The State must provide this assurance even if it intends to transfer this interest to a third party. (See § 35.6400 of this subpart for additional information on real property acquisition requirements.)

§ 35.6110 Indian Tribe-lead remedial Cooperative Agreements.

(a) *Application requirements.* The Indian Tribe must comply with all of the requirements described in § 35.6105(a) and, if appropriate, § 35.6105(b)(5) of this subpart. Indian Tribes are not required to comply with the intergovernmental review requirements included in the "Application for Federal Assistance" (SF–424). Consistent with the NCP (§ 300.510(e)(2)), this rule does not address whether Indian Tribes are States for the purpose of CERCLA section 104(c)(9).

(b) *Cooperative Agreement requirements.* (1) The Indian Tribe must comply with all terms and conditions in the Cooperative Agreement.

(2) If EPA determines as part of the remedy selection process that an interest in real property must be acquired in order to conduct the site-specific response action, the Indian Tribe will be required, to the extent of its legal authority, to assure EPA that it will take title to, acquire interest in, or accept transfer of such interest in real property acquired with CERCLA funds, including any interest in property that is acquired to ensure the reliability of institutional controls restricting the use of that property. (See § 35.6400 of this subpart regarding information on property title and interest requirements.)

(3) If it is designated the lead for remedial action, the Indian Tribe must provide the notification required at § 35.6120, substituting the term "Indian Tribe" for the term "State" in that section, and "out-of-jurisdiction" for "out-of-State."

§ 35.6115 Political subdivision-lead remedial Cooperative Agreements.

(a) *General.* If both the State and EPA agree, a political subdivision with the necessary capabilities and jurisdictional authority may assume the lead responsibility for the remedial activity, or a portion thereof, at a site. The State and political subdivision must enter into a three-party Superfund State Contract (SSC) with EPA before a political subdivision can enter into a Cooperative Agreement.

(b) *Three-party Superfund State Contract requirements.* The three-party SSC must specify the responsibilities of the signatories. By signing the SSC, the State and the political subdivision agree to follow the appropriate administrative requirements regarding SSCs described in §§ 35.6805, 35.6815, and 35.6820 of this subpart. Furthermore, EPA, the State, and the political subdivision agree that the SSC:

(1) Specifies the substantial and meaningful involvement of the State as required by section 121(f)(1) of CERCLA, as amended; and

(2) Includes the State's CERCLA section 104 assurances, if the political subdivision is designated the lead for remedial action.

(c) *Political subdivision Cooperative Agreement requirements.*—(1) *Application requirements.* To receive a remedial Cooperative Agreement, the political subdivision must prepare an application which includes the documentation described in § 35.6105 (a)(1) through (a)(6).

(2) *Cooperative Agreement requirements.* The political subdivision must comply with all terms and conditions in the Cooperative Agreement. If it is designated the lead for remedial action, the political subdivision must provide the notification required at § 35.6120, substituting the term "political subdivision" for the term "State" in that section.

§ 35.6120 Notification of the out-of-State or out-of-Indian Tribal jurisdiction transfer of CERCLA wastes.

(a) The recipient must provide written notification of off-site shipments of CERCLA waste from a site to an out-of-State or out-of-Indian Tribal jurisdiction waste management facility to:

(1) The appropriate State environmental official for the State in which the waste management facility is located; and/or

(2) The appropriate Indian Tribal official who has jurisdictional authority in the area where the waste management facility is located; and

(3) The EPA Award Official.

(b) The notification of off-site shipments does not apply when the total volume of all such shipments from the site does not exceed 10 cubic yards.

(c) The notification must be in writing and must provide the following information, where available:

(1) The name and location of the facility to which the CERCLA waste is to be shipped;

(2) The type and quantity of CERCLA waste to be shipped;

(3) The expected schedule for the shipments of the CERCLA waste; and

(4) The method of transportation of the CERCLA waste.

(d) The recipient must notify the State or Indian Tribal government in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the CERCLA waste to another facility within the same receiving State, or to a facility in another State.

(e) The recipient must provide relevant information on the off-site shipments, including the information in paragraph (c) above, as soon as possible after the award of the contract and, where practicable, before the CERCLA waste is actually shipped.

Enforcement Cooperative Agreements

§ 35.6145 Eligibility for enforcement Cooperative Agreements.

Pursuant to CERCLA section 104(d), States, political subdivisions thereof, and Indian Tribes may apply for enforcement Cooperative Agreements. To be eligible for an enforcement Cooperative Agreement, the State, political subdivision or Indian Tribe must demonstrate that it has the authority, jurisdiction, and the necessary administrative capabilities to take an enforcement action(s) to compel PRP cleanup of the site, or recovery of the cleanup costs. To accomplish this, the State, political subdivision or Indian Tribe, respectively, must submit the following for EPA approval:

(a) A letter from the State Attorney General, or comparable local official (of a political subdivision) or comparable Indian Tribal official, certifying that it has the authority, jurisdiction, and administrative capabilities that provide a basis for pursuing enforcement actions against a PRP to secure the necessary response;

(b) A copy of the applicable State, local (political subdivision) or Indian Tribal statute(s) and a description of how it is implemented;

(c) Any other documentation required by EPA to demonstrate that the State, local (political subdivision) or Indian Tribal government has the statutory authority, jurisdiction, and administrative capabilities to perform the enforcement activity(ies) to be funded under the Cooperative Agreement.

§ 35.6150 Activities eligible for funding under enforcement Cooperative Agreements.

An enforcement Cooperative Agreement application from a State, political subdivision or Indian Tribe may request funding for the following enforcement activities:

(a) PRP searches;

(b) Issuance of notice letters and negotiation activities;

(c) Administrative and judicial enforcement actions taken under State or Indian Tribal law;

(d) Management assistance and oversight of PRPs during Federal enforcement response;

(e) Oversight of PRPs during a State, political subdivision or Indian Tribe enforcement response contingent on the applicant having taken all necessary action to compel PRPs to fund the oversight of cleanup activities negotiated under the recipient's enforcement authorities. If the State, political subdivision, Indian Tribe or EPA cannot obtain PRP commitment to fund such oversight activities, then these activities will be considered eligible for CERCLA funding under an enforcement Cooperative Agreement.

§ 35.6155 State, political subdivision or Indian Tribe-lead enforcement Cooperative Agreements.

(a) The State, political subdivision or Indian Tribe must comply with the requirements described in § 35.6105 (a)(1) through (a)(6) of this subpart, as appropriate.

(b) The CERCLA section 104 assurances described in § 35.6105(b) are not applicable for enforcement Cooperative Agreements.

(c) Before an enforcement Cooperative Agreement is awarded, the State, political subdivision or Indian Tribe must:

(1) Assure EPA that it will notify and consult with EPA promptly if the recipient determines that its laws or other restrictions prevent the recipient from acting consistently with CERCLA; and

(2) If the applicant is seeking funds for oversight of PRP cleanup, the applicant must:

(i) Demonstrate that the proposed Statement of Work or cleanup plan prepared by the PRP satisfies the recipient's enforcement goals for those instances in which the recipient is seeking funding for oversight of PRP cleanup activities negotiated under the recipient's own enforcement authorities; and

(ii) Demonstrate that the PRP has the capability to attain the goals set forth in the plan;

(iii) Demonstrate that it has taken all necessary action to compel PRPs to fund the oversight of cleanup activities negotiated under the recipient's enforcement authorities.

Removal Response Cooperative Agreements

§ 35.6200 Eligibility for removal Cooperative Agreements.

When a planning period of more than six months is available, States, political subdivisions and Indian Tribes may apply for removal Cooperative Agreements.

§ 35.6205 Removal Cooperative Agreements.

(a) The State must comply with the requirements described in § 35.6105(a) of this subpart. To the extent practicable, the State must comply with the notification requirement at § 35.6120 when a removal action is necessary and involves out-of-State shipment of CERCLA wastes, and when, based on the site evaluation, EPA determines that a planning period of more than six months is available before the removal activities must begin.

(b) Pursuant to CERCLA section 104(c)(3), the State is not required to share in the cost of a CERCLA-funded removal action, unless the removal is conducted at a site that was publicly operated by a State or political subdivision at the time of disposal of hazardous substances and a CERCLA-funded remedial action is ultimately undertaken at the site. In this situation, the State must share at least 50 percent in the cost of all removal, remedial planning, and remedial action costs at the time of the remedial action as stated in § 35.6105(b)(2)(ii) of this subpart.

(c) If both the State and EPA agree, a political subdivision with the necessary capabilities and jurisdictional authority may assume the lead responsibility for all, or a portion, of the removal activity at a site. Political subdivisions must comply with the requirements described in § 35.6105(a) of this subpart. To the extent practicable, political subdivisions also must comply with the notification requirement at § 35.6120 when a removal action is necessary and involves the shipment of CERCLA wastes out of the State's jurisdiction, and when, based on the site evaluation, EPA determines that a planning period of more than six months is available before the removal activities must begin.

(d) The State must provide the cost share assurance discussed in § 35.6205(b) above on behalf of a political subdivision that is given the lead for a removal action.

(e) Indian Tribes must comply with the requirements described in § 35.6105(a) of this subpart. To the extent practicable, Indian Tribes also must comply with the notification requirement at §35.6120 when a removal action is necessary and involves the shipment of CERCLA wastes out of the Indian Tribe's jurisdiction, and when, based on the site evaluation, EPA determines that a planning period of more than six months is available before the removal activities must begin.

(f) Indian Tribes are not required to share in the cost of a CERCLA-funded removal action.

Core Program Cooperative Agreements

§ 35.6215 Eligibility for Core Program Cooperative Agreements.

(a) States and Indian Tribes may apply for Core Program Cooperative Agreements in order to conduct CERCLA implementation activities that are not directly assignable to specific sites, but are intended to support a State's or Indian Tribe's ability to participate in the CERCLA; response program.

(b) Only the State or Indian Tribal government agency designated as the single point of contact with EPA for CERCLA implementation is eligible to receive a Core Program Cooperative Agreement.

(c) When it is more economical for a government entity other than the recipient (such as a political subdivision or State Attorney General) to implement tasks funded through a Core Program Cooperative Agreement, benefits to such entities must be provided for in an intergovernmental agreement.

§ 35.6220 General.

The recipient of a Core Program Cooperative Agreement must comply with the requirements regarding financial administration (§§ 35.6270 through 35.6290 of this subpart), property (§§ 35.6300 through 35.6450), procurement (§§ 35.6550 through 35.6610), reporting (§§ 35.6650 through 35.6670), records (§§ 35.6700 through 35.6710), and other administrative requirements under a Cooperative Agreement (§§ 35.6750 through 35.6790) described in this subpart. Recipients may not incur site-specific costs. Where these sections entail site-specific requirements, the recipient is not required to comply on a site-specific basis.

§ 35.6225 Activities eligible for funding under Core Program Cooperative Agreements.

To be eligible for funding under a Core Program Cooperative Agreement, activities must support a recipient's abilities to implement CERCLA. Once the recipient has in place program functions described in § 35.6225 (a) through (d) below, EPA will evaluate the recipient's program needs to sustain interaction with EPA in CERCLA implementation as described in § 35.6225(e). The amount of funding provided under the Core Program will be determined by EPA based on the availability of funds and the recipient's program needs in the areas described in (a) through (d) below:

(a) Procedures for emergency response actions and longer-term remediation of environmental and health risks at hazardous waste sites (including but not limited to the development of generic health and safety plans, quality assurance project plans, and community relation plans);

(b) Provisions for satisfying all requirements and assurances (including the development of a fund or other financing mechanism(s) to pay for studies and remediation activities);

(c) Legal authorities and enforcement support associated with proper administration of the recipient's program and with efforts to compel potentially responsible parties to conduct or pay for studies and/or remediation (including but not limited to the development of statutory authorities; access to legal assistance in identifying applicable or relevant and appropriate requirements of other laws; and development and maintenance of the

administrative, financial and recordkeeping systems necessary for cost recovery actions under CERCLA);

(d) Efforts necessary to hire and train staff to manage publicly-funded cleanups, oversee responsible party-lead cleanups, and provide clerical support; and

(e) Other activities deemed necessary by EPA to support sustained EPA/recipient interaction in CERCLA implementation (including but not limited to general program management and supervision necessary for a recipient to implement CERCLA activities, and interagency coordination on all phases of CERCLA response).

Continued funding of tasks in subsequent years will be based on an evaluation of demonstrated progress towards the goals in the existing Core Program Cooperative Agreement Statement of Work.

§ 35.6230 Application requirements.

To receive a Core Program Cooperative Agreement, the applicant must submit an application form ("Application for Federal Assistance," SF-424, for non-construction programs) to EPA. Applications for additional funding need include only the revised pages. The application must include the following:

(a) *A project narrative statement,* including the following:

(1) *A Statement of Work (SOW)* which must include a detailed description of the CERCLA-funded activities and tasks to be conducted, the projected costs associated with each task, the number of products to be completed, and a schedule for implementation. Eligible activities under Core Program Cooperative Agreements are discussed in § 35.6225 of this subpart;

(2) *A background statement,* describing the current abilities and authorities of the recipient's program for implementing CERCLA, the program's needs to sustain and increase recipient involvement in CERCLA implementation, and the impact of Core Program Cooperative Agreement funds on the recipient's involvement in site-specific CERCLA response.

(b) *Budget sheets* (SF-424A);

(c) *Proposed project and budget periods* for CERCLA-funded activities. The project and budget periods may be one or more years and may be extended incrementally, up to 12 months at a time, with EPA approval;

(d) *Certifications* for a drug-free workplace; debarment, suspensions, and other responsibility matters; procurement and lobbying, pursuant to § 35.6105(a) (3) through (6) of this subpart.

§ 35.6235 Cost sharing.

The recipient of a Core Program Cooperative Agreement must provide at least ten percent of the direct and indirect costs of all activities covered by the Core Program Cooperative Agreement. The recipient must provide its cost share with non-Federal funds or with Federal funds authorized by statute to be used for matching purposes. Funds used for matching purposes under any other Federal grant or Cooperative Agreement cannot be used for matching purposes under a Core Program Cooperative Agreement. The recipient may provide its share using in-kind contributions if such contributions are provided for in the Cooperative Agreement. The recipient may not use CERCLA State credits to offset any part of the recipient's required match for Core Program Cooperative Agreements. See § 35.6285 (c), (d), and (f) regarding credit, over match, and advance match, respectively.

Support Agency Cooperative Agreements

§ 35.6240 Eligibility for support agency Cooperative Agreements.

States, political subdivisions, and Indian Tribes may apply for support agency Cooperative Agreements to ensure their meaningful and substantial involvement in response activities, as specified in sections 104 and 121(f)(1) of CERCLA and the NCP. (See § 35.6800 (a) and (b).)

§ 35.6245 Allowable activities.

Support agency activities are those activities conducted by the recipient to ensure its meaningful and substantial involvement. The activities described in section 121(f)(1) of CERCLA, as amended, and in subpart F of the NCP, are eligible for funding under a support agency Cooperative Agreement.

§ 35.6250 Support agency Cooperative Agreement requirements.

(a) *Application requirements.* The applicant must comply with the requirements described in § 35.6105(a) (1), (4), (5) and (6), and other requirements as negotiated with EPA. (Indian Tribes are exempt from the requirement of Intergovernmental Review in part 29 of this chapter.) An applicant may submit a non-site-specific budget for support agency activities, with the exception of remedial action support agency activities, which require cost share and must be applied for within a site-specific budget. All support agency activities are subject to the applicable sections of this subpart.

(b) *Cooperative Agreement requirements.* The recipient must comply with the requirements regarding financial administration (§§ 35.6270 through 35.6290 of this subpart), property (§§ 35.6300 through 35.6450), procurement (§§ 35.6550 through 35.6610), reporting (§§ 35.6650 through 35.6670), records (§§ 35.6700 through 35.6710), and other administrative requirements under a Cooperative Agreement (§§ 35.6750 through 35.6790) described in this subpart.

§ 35.6255 Cost sharing.

The requirements for cost sharing under a support agency Cooperative Agreement are the same as the cost sharing requirements of § 35.6105(b)(2) of this subpart. The State may use in-kind services as part of its cost share. (See § 35.6815(b) for SSC payment requirements.)

Financial Administration Requirements Under a Coopertive Agreement

§ 35.6270 Standards for financial management systems.

(a) *Accounting system standards.* (1) *General.* The recipient's system must track expenses by site, activity, and, operable unit, as applicable, according to object class. The system must also provide control, accountability, and an assurance that funds, property, and other assets are used only for their authorized purposes. The recipient must allow an EPA review of the adequacy of the financial management system as described in 40 CFR 31.20(c).

(2) *Allowable costs.* The recipient's systems must comply with the appropriate allowable cost principles described in 40 CFR 31.22.

(3) *Pre-remedial.* The system need not track expenses by site. However, all pre-remedial costs must be documented under a single Superfund account number designated specifically for the preremedial activity.

(4) *Core Program.* Since all costs associated with Core Program Cooperative Agreements are non-site-specific, the systems need not track expenses by site. However, all Core Program costs must be documented under the Superfund account number(s) designated specifically for Core Program activity.

(5) *Support Agency.* Unless otherwise specified in the Cooperative Agreement, all support agency costs, with the exception of remedial action support agency costs, may be documented under a single Superfund account number designated specifically for support

agency activities. Remedial action support agency activities must be documented site-specifically.

(6) *Accounting system control procedures.* Except as provided for in paragraph (a)(3) of this section, accounting system control procedures must ensure that accounting information is:

(i) Accurate, charging only costs attributable to the site, activity, and operable unit, as applicable; and

(ii) Complete, recording and charging to individual sites, activities, and operable units, as applicable, all costs attributable to the recipient's CERCLA effort.

(7) *Financial reporting.* The recipient's accounting system must use actual costs as the basis for all reports of direct site charges. The recipient must comply with the requirements for financial reporting contained in § 35.6670 of this subpart.

(b) *Recordkeeping system standards.* (1) The recipient must maintain a recordkeeping system that enables site-specific costs to be tracked by site, activity, and operable unit, as applicable, and provides sufficient documentation for cost recovery purposes.

(2) The recipient must provide this site-specific documentation to the EPA Regional Office within 30 working days of a request, unless another time frame is specified in the Cooperative Agreement.

(3) In addition, the recipient must comply with the requirements regarding records described in §§ 35.6700, 35.6705, and 35.6710 of this subpart. The recipient must comply with the requirements regarding source documentation described in 40 CFR 31.20(b)(6).

(4) For pre-remedial and Core Program activities, the recordkeeping system must comply with the requirements described in paragraphs (a)(3) and (a)(4), respectively, of this section.

§ 35.6275 Period of availability of funds.

(a) The recipient must comply with the requirements regarding the availability of funds described in 40 CFR 31.23.

(b) Except as permitted in § 35.6285, the Award Official must sign the assistance agreement before costs are incurred. The recipient may incur costs between the date the Award Official signs the assistance agreement and the date the recipient signs the agreement, if the costs are identified in the agreement and the recipient does not change the agreement.

§ 35.6280 Payments.

(a) *General.* In addition to the following requirements, the recipient must comply with the requirements regarding payment described in 40 CFR 31.21(f) through (h).

(1) *Assignment of payment.* The recipient cannot assign the right to receive payments under the recipient's Cooperative Agreement. EPA will make payments only to the payee identified in the Cooperative Agreement.

(2) *Interest.* If the recipient earns interest on an advance of EPA funds, the recipient must return the interest unless the recipient is a State or State agency as defined under section 203 of the Intergovernmental Cooperation Act of 1968, or a Tribal organization as defined under section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. 93-638).

(b) *Payment method*—(1) *Letter of credit.* In order to receive payment by the letter of credit method, the recipient must comply with the requirements regarding letter of credit described in 40 CFR 31.20 (b)(7) and 31.21(b). The recipient must identify and charge costs to specific sites, activities, and operable units, as applicable, for drawdown purposes as specified in the Cooperative Agreement.

(2) *Reimbursement.* If the recipient is unable to meet letter of credit requirements, EPA will pay the recipient by reimbursement. The recipient must comply with the requirements regarding reimbursement described in 40 CFR 31.21(d).

(3) *Working capital advances.* If the recipient is unable to meet the criteria for payment by either letter of credit or reimbursement, EPA may provide cash on a working capital advance basis. Under this procedure EPA shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the recipient's disbursing cycle. Thereafter, EPA shall reimburse the recipient for its actual cash disbursements. In such cases, the recipient must comply with the requirements regarding working capital advances described in 40 CFR 31.21(e).

§ 35.6285 Recipient payment of response costs.

The recipient may pay for its share of response costs using cash, services, credits or any combination of these, as follows:

(a) *Cash.* The recipient may pay for its share of response costs in the form of cash.

(b) *Services.* The recipient may provide equipment and services to satisfy its cost share requirements under Cooperative Agreements. The recipient must comply with the requirements regarding in-kind and donated services described in 40 CFR 31.24.

(c) *Credit*— (1) *General credit requirements.* Credits are limited to State site-specific expenses that EPA determines to be reasonable, documented, direct, out-of-pocket expenditures of non-Federal funds for remedial action. Credits are established on a site-specific basis. Only a State may claim credit.

(i) The State may claim credit for response activity obligations or expenditures incurred by the State or political subdivision between January 1, 1978 and December 11, 1980.

(ii) The State may claim credit for remedial action expenditures incurred by the State after October 7, 1986.

(iii) The State may not claim credit for removal actions taken after December 11, 1980.

(2) *Credit submission requirements.* (i) *Expenditures incurred before a site is listed on the NPL.* Although EPA may require additional documentation, the State must submit the following before EPA will approve the use of the credit:

(A) Specific amounts claimed for credit, by site (estimated amounts are unacceptable), based on supporting cost documentation;

(B) Units of government (State agency, county, local) that incurred the costs, by site;

(C) Description of the specific function performed by each unit of government at each site;

(D) Certification (signed by the State's fiscal manager or the financial director for each unit of government) that credit costs have not been previously reimbursed by the Federal government or any other party, and have not been used for matching purposes under any other Federal program or grant; and

(E) Documentation, if requested by EPA, to ensure the actions undertaken at the site are cost eligible and consistent with CERCLA, as amended, and the NCP requirements. This requirement does not apply for costs incurred before December 11, 1980.

(ii) *Expenditures incurred after a site is listed on the NPL.* A State may receive credit for remedial action expenditures after October 17, 1986, only if the State entered into a Cooperative Agreement before incurring costs at the site.

(3) *Use of credit.* The State must first apply credit at the site at which it was earned. With the approval of EPA, the State may use excess credit earned at one site for its cost share at another site

(See CERCLA section 104(c)(5)). Credits must be applied on a site-specific basis, and, therefore, may not be used to meet State cost-share requirements for Core Program Cooperative Agreements. EPA will not reimburse excess credit.

(4) *Credit verification.* Credits are subject to verification by audit and technical review of actions performed at sites.

(d) *Over match.* The recipient may not use contributions in excess of the required cost-share at one site to meet the cost-share obligation at another site or the Core Program cost-share obligation. Overmatch is not "credit" pursuant to § 35.6285(c)(3).

(e) *Cost sharing.* The recipient must comply with the requirements regarding cost sharing described in 40 CFR 31.24. Finally, the recipient cannot use costs incurred under the Core Program to offset cost-share requirements at a site.

(f) *Advance match.* (1) A Cooperative Agreement for a site-specific response entered into after October 17, 1986 cannot authorize a State to contribute funds during remedial planning and then apply those contributions to the remedial action cost share (advance match).

(2) A State may seek reimbursement for costs incurred under Cooperative Agreements which authorize advance match.

(3) Reimbursements are subject to the availability of appropriated funds.

(4) If the State does not seek reimbursement, EPA will apply the advance match to off-set the State's required cost share for remedial action at the site. The State may not use advance match for credit at any other site, nor may the State receive reimbursement until the conclusion of CERCLA-funded remedial response activities. Also, the State may not use advance match for credit against cost-share obligations for Core Program Cooperative Agreements.

(5) Claims for advance match are subject to verification by audit.

§ 35.6290 Program income.

The recipient must comply with the requirements regarding program income described in 40 CFR part 31.25.

Personal Property Requirements under a Cooperative Agreement

§ 35.6300 General personal property acquisition and use requirements.

(a) *General.* (1) Property may be acquired only when authorized in the Cooperative Agreement.

(2) The recipient must acquire the property during the approved project period.

(3) The recipient must:

(i) Charge property costs by site, activity, and operable unit, as applicable;

(ii) Document the use of the property by site, activity, and. operable unit, as applicable; and

(iii) Solicit and follow EPA's instructions on the disposal of any property purchased with CERCLA funds as specified in § 35.6340 and § 35.6345 of this subpart.

(b) *Exception.* The recipient is not required to charge property costs by site under a pre-remedial or Core Program Cooperative Agreement.

§ 35.6305 Obtaining supplies.

To obtain supplies, the recipient must agree to comply with the requirements in §§ 35.6300, 35.6315(b), 35.6325 through 35.6340, and 35.6350 of this subpart. Supplies obtained with Core Program funds must be for non-site-specific purposes. All purchases of supplies under the Core Program must comply with the requirements in the above listed sections, except where these requirements are site-specific.

§ 35.6310 Obtaining equipment.

To obtain equipment, the recipient must agree to comply with the requirements in § 35.6300 and §§ 35.6315 through 35.6350 of this subpart.

§ 35.6315 Alternative methods for obtaining property.

(a) *Purchase equipment with recipient funds.* The recipient may purchase equipment with the recipient's own funds and may charge EPA a fee for using equipment on a CERCLA-funded project. The fee must be based on a usage rate, subject to the usage rate requirements in § 35.6320 of this subpart.

(b) *Borrow federally owned property.* The recipient may borrow federally owned property, with the exception of motor vehicles, for use on CERCLA-funded projects. The loan of the federally owned property may only extend through the project period. At the end of the project period, or when the federally owned property is no longer needed for the project, the recipient must return the property to the Federal Government.

(c) *Lease, use contractor services, or purchase with CERCLA funds.* To acquire equipment through lease, use of contractor services, or purchase with CERCLA funds, the recipient must conduct and document a cost comparison analysis to determine which of these methods of obtaining equipment is the most cost effective. In order to obtain the equipment, the recipient must submit documentation of the cost comparison analysis to EPA for approval. The recipient must obtain the equipment through the most cost effective method, subject to the requirements listed below:

(1) *Lease or rent equipment.* If it is the most cost effective method of acquisition, the recipient may lease or rent equipment, subject only to the requirements in § 35.6300 of this subpart.

(2) *Use contractor services.* (i) If it is the most cost effective method of acquisition, the recipient may hire the services of a contractor.

(ii) The recipient must obtain award official approval before authorizing the contractor to purchase equipment with CERCLA funds. (See § 35.6325 of this subpart regarding the title and vested interest of equipment purchased with CERCLA funds.) This does not apply for recipients who have used the sealed bids method of procurement.

(iii) The recipient must require the contractor to allocate the cost of the contractor services by site, activity, and operable unit, as applicable.

(3) *Purchase equipment with CERCLA funds.* If equipment purchase is the most cost-effective method of obtaining the equipment, the recipient may purchase the equipment with CERCLA funds. To purchase equipment with CERCLA funds, the recipient must comply with the following requirements:

(i) The recipient must include in the Cooperative Agreement application a list of all items of equipment to be purchased with CERCLA funds, with the price of each item.

(ii) If the equipment is to be used on sites, the recipient must allocate the cost of the equipment by site, activity, and operable unit, as applicable, by applying a usage rate subject to the usage rate requirements in § 35.6320 of this subpart.

(iii) The recipient may not use CERCLA funds to purchase a transportable or mobile treatment system.

(iv) Equipment obtained with Core Program funds must be for non-site-specific purposes. All purchases of equipment must comply with the requirements in § 35.6300, and §§ 35.6310 through 35.6350 of this subpart, except where these requirements are site-specific.

§ 35.6320 Usage rate.

(a) *Usage rate approval.* To charge EPA a fee for use of equipment purchased with recipient funds or to allocate the cost of equipment by site, activity, and operable unit, as applicable, the recipient must apply a usage rate. The recipient must submit documentation of the usage rate computation to EPA. The EPA-approved

usage rate must be included in the Cooperative Agreement before the recipient incurs these equipment costs.

(b) *Usage rate application.* The recipient must record the use of the equipment by site, activity, and operable unit, as applicable, and must apply the usage rate to calculate equipment charges by site, activity, and operable unit, as applicable. For Core Program and pre-remedial activities, the recipient is not required to apply a usage rate.

§ 35.6325 Title and EPA interest in CERCLA-funded property.

(a) *EPA's interest in CERCLA-funded property.* EPA has an interest (the percentage of EPA's participation in the total award) in both equipment and supplies purchased with CERCLA funds.

(b) *Title in CERCLA-funded property.* Title in both equipment and supplies purchased with CERCLA funds vests in the recipient.

(1) *Right to transfer title.* EPA retains the right to transfer title of all property purchased with CERCLA funds to the Federal Government or a third party within 120 calendar days after project completion or at the time of disposal.

(2) *Equipment used as all or part of the remedy.* The following requirements apply to equipment used as all or part of the remedy:

(i) *Fixed in-place equipment.* EPA no longer has an interest in fixed in-place equipment once the equipment is installed.

(ii) *Equipment that is an integral part of services to individuals.* EPA no longer has an interest in equipment that is an integral part of services to individuals, such as pipes, lines, or pumps providing hookups for homeowners on an existing water distribution system, once EPA certifies that the remedy is operational and functional.

§ 35.6330 Title to federally owned property.

Title to all federally owned property vests in the Federal Government.

§ 35.6335 Property management standards.

The recipient must comply with the following property management standards for property purchased with CERCLA funds. The recipient may use its own property management system if it meets the following standards.

(a) *Control.* The recipient must maintain:

(1) *Property records* for CERCLA-funded property which include the contents specified in § 35.6700(c) of this subpart;

(2) *A control system* which ensures adequate safeguards for prevention of loss, damage, or theft of the property. The recipient must make provisions for the thorough investigation and documentation of any loss, damage, or theft;

(3) *Procedures* to ensure maintenance of the property in good condition and periodic calibration of the instruments used for precision measurements;

(4) *Sales procedures* to ensure the highest possible return, if the recipient is authorized to sell the property;

(5) *Provisions for financial control and accounting* in the financial management system of all equipment; and

(6) *Identification* of all federally owned property.

(b) *Inventory and reporting for CERCLA-funded equipment.*

(1) *Physical inventory.* The recipient must conduct a physical inventory at least once every two years for all equipment except that which is part of the in-place remedy. The recipient must reconcile physical inventory results with the equipment records.

(2) *Inventory reports.* The recipient must comply with requirements for inventory reports set forth in § 35.6660 of this subpart.

(c) *Inventory and reporting for federally owned property.*

(1) *Physical inventory.* The recipient must conduct a physical inventory:

(i) Annually;

(ii) When the property is no longer needed; and

(iii) Within 90 days after the end of the project period.

(2) *Inventory reports.* The recipient must comply with requirements for inventory reports in § 35.6660 of this subpart.

§ 35.6340 Disposal of CERCLA-funded property.

(a) *Equipment.* For equipment which is no longer needed, or at the end of the project period, whichever is earlier, the recipient must:

(1) Analyze two alternatives: the cost of leaving the equipment in place, and the cost of removing the equipment and disposing of it in another manner;

(2) Document the analysis of the two alternatives in the inventory report. See § 35.6660 of this subpart regarding requirements for the inventory report.

(i) If it is most cost-effective to remove the equipment and dispose of it in another manner:

(A) If the equipment has a residual fair market value of $5,000 or more, the recipient must request disposition instructions from EPA in the inventory report. See § 35.6345 of this subpart for equipment disposal options.

(B) If the equipment has a residual fair market value of less than $5,000, the recipient may retain the equipment for the recipient's use on another CERCLA site. If, however, there is any remaining residual value at the time of final disposition, the recipient must reimburse the Hazardous Substance Superfund for EPA's vested interest in the current fair market value of the equipment at the time of disposition.

(ii) If it is most cost-effective to leave the equipment in place, recommend in the inventory report that the equipment be left in place.

(3) Submit the inventory report to EPA, even if EPA has stopped supporting the project.

(b) *Supplies.* (1) If supplies have an aggregate fair market value of $5,000 or more at the end of the project period, the recipient must take one of the following actions at the direction of EPA:

(i) Use the supplies on another CERCLA project and reimburse the original project for the fair market value of the supplies;

(ii) If both the recipient and EPA concur, keep the supplies and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the supplies; or

(iii) Sell the supplies and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the supplies, less any reasonable selling expenses.

(2) If the supplies remaining at the end of the project period have an aggregate fair market value of less than $5,000, the recipient may keep the supplies to use on another CERCLA project. If the recipient cannot use the supplies on another CERCLA project, then the recipient may keep or sell the supplies without reimbursing the Hazardous Substance Superfund.

§ 35.6345 Equipment disposal options.

The following disposal options are available:

(a) Use the equipment on another CERCLA project and reimburse the original project for the fair market value of the equipment;

(b) If both the recipient and EPA concur, keep the equipment and reimburse the Hazardous Substance Superfund, for EPA's interest in the current fair market value of the equipment;

(c) Sell the equipment and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the equipment, less any reasonable selling expenses; or

(d) Return the equipment to EPA and, if applicable, EPA will reimburse the recipient for the recipient's

proportionate share in the current fair market value of the equipment.

§ 35.6350 Disposal of federally owned property.

When federally owned property is no longer needed, or at the end of the project, the recipient must inform EPA that the property is available for return to the Federal Government. EPA will send disposition instructions to the recipient.

Real Property Requirements under a Cooperative Agreement

§ 35.6400 Acquisition and transfer of interest.

(a) An interest in real property may be acquired only with prior approval of EPA.

(1) If the recipient acquires real property in order to conduct the response, the recipient with jurisdiction over the real property, to the extent of its legal authority, must agree to acquire and hold the necessary real property interest.

(2) If it is necessary for the Federal Government to acquire the interest in real property to permit conduct of the response, the State or Indian Tribe, to the extent of its legal authority, must agree to accept transfer of the acquired interest on or before the completion of the response action. States and Indian Tribes must follow the requirements in §§ 35.6105(b)(5) and 35.6110(b)(2), respectively, of this subpart.

(b) The recipient must comply with applicable Federal regulations for real property acquisition under assistance agreements contained in part 4 of this chapter, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs."

§ 35.6405 Use.

The recipient must comply with the requirements regarding real property described in 40 CFR 31.31.

Copyright Requirements under a Cooperative Agreement

§ 35.6450 General requirements.

The recipient must comply with the requirements regarding copyrights described in 40 CFR 31.34. The recipient must comply with the requirements regarding contract copyright provisions described in § 35.6595(b)(3) of this subpart.

Use of Recipient Employees ("Force Account") under a Cooperative Agreement

§ 35.6500 General requirements.

(a) Force Account work is the use of the recipient's own employees or equipment for construction, construction-related activities (including architecture and engineering services), or repair or improvement to a facility. When using Force Account work, the recipient must demonstrate that the employees can complete the work as competently as, and more economically than, contractors, or that an emergency necessitates the use of the Force Account.

(b) Where the value of Force Account services exceeds $25,000, the recipient must receive written authorization for use from the award official.

Procurement Requirements under a Cooperative Agreement

§ 35.6550 Procurement system standards.

(a) *Recipient standards*—(1) *Procurement system evaluation.* (i) An applicant or recipient must evaluate its own procurement system to determine if the system meets the intent of the requirements of this subpart. After evaluating its procurement system, the applicant or recipient must complete the "Procurement System Certification" (EPA Form 5700–48) and submit the form to EPA with its application.

(ii) The certification will be valid for two years or for the length of the project period specified in the Cooperative Agreement, whichever is greater, unless the recipient substantially revises its procurement system or the award official determines that the recipient is not following the intent of the requirements in this part. (See subparagraph (a)(4) of this section regarding EPA right to review.) If the recipient substantially revises its procurement system, the recipient must re-evaluate its system and submit a revised EPA Form 5700–48.

(2) *Certified procurement system.* Even if the applicant or recipient has certified that its procurement system meets the intent of the requirements of this subpart, the EPA award official retains the authority as stated in:

(i) Section 35.6565(d)(1)(iii), "Noncompetitive proposals," regarding award official authorization of noncompetitive proposals;

(ii) Section 35.6565(b), "Sealed bids (formal advertising)," regarding award official approval for the use of a procurement method other than sealed bidding for a remedial action award contract, except for Architectural/Engineering services and post-removal site control;

(iii) Section 35.6550(a)(9), "Protests," regarding EPA review of protests; and

(iv) 40 CFR 31.36(g)(2)(iv), "Awarding Agency Review," regarding the review of proposed awards over $25,000 which are to be awarded to other than the apparent low bidder under a sealed bid procurement.

(3) *Noncertified procurement system.* If the applicant or recipient has not certified that its procurement system meets the intent of the requirements of this subpart, then the recipient must follow the requirements of this subpart and allow EPA preaward review of proposed procurement actions that will use EPA funds. In addition, the recipient's contractors and subcontractors must submit their cost or price data on EPA Form 5700–41, "Cost or Price Summary Format for Subagreements Under U.S. EPA Grants," or in another format which provides information similar to that required by EPA Form 5700–41. This specific requirement is an addition to the requirements regarding cost and price analysis described in § 35.6585 of this subpart.

(4) *EPA review.* EPA reserves the right to review any recipient's procurement system or procurement action under a Cooperative Agreement.

(5) *Code of conduct.* The recipient must comply with the requirements of 40 CFR 31.36(b)(3), which describes standards of conduct for employees, officers, and agents of the recipient.

(6) *Completion of contractual and administrative issues.* (i) The recipient is responsible for the settlement and satisfactory completion in accordance with sound business judgement and good administrative practice of all contractual and administrative issues arising out of procurements under the Cooperative Agreement.

(ii) EPA will not substitute its judgement for that of the recipient unless the matter is primarily a Federal concern.

(iii) Violations of law will be referred to the local, State, Tribal, or Federal authority having proper jurisdiction.

(7) *Selection procedures.* The recipient must have written selection procedures for procurement transactions.

(i) EPA may not participate in a recipient's selection panel except to provide technical assistance. EPA staff providing such technical assistance:

(A) Shall constitute a minority of the selection panel (limited to making recommendations on qualified offers and acceptable proposals based on

published evaluation criteria) for the contractor selection process; and

(B) Are not permitted to participate in the negotiation and award of contracts.

(ii) When selecting a contractor, recipients:

(A) May not use EPA contractors to provide any support related to procuring a State contractor.

(B) May use the Corps of Engineers for review of State bidding documents, requests for proposals and bids and proposals received.

(8) *Award.* The recipient may award a contract only to a responsible contractor, as described in 40 CFR 31.36(b)(8), and must ensure that each contractor performs in accordance with all the provisions of the contract. (See also 35.6560 of this subpart regarding debarred and suspended contracts.)

(9) *Protest procedures.* The recipient must comply with the requirements described in 40 CFR 31.36(b)(12) regarding protest procedures.

(10) *Reporting.* The recipient must comply with the requirements for procurement reporting contained in § 35.6665 of this subpart.

(11) *Intergovernmental agreements.* (i) To foster greater economy and efficiency, recipients are encouraged to enter into intergovernmental agreements for procurement or use of common goods and services.

(ii) Although intergovernmental agreements are not subject to the requirements set forth at §§ 35.6550 through 35.6610, all procurements under intergovernmental agreements are subject to these requirements except for procurements that are:

(A) Incidental to the purpose of the assistance agreement; and

(B) Made through a central public procurement unit.

(12) *Value engineering.* The recipient is encouraged to include value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

(b) *Contractor standards*—(1) *Disclosure requirements regarding Potentially Responsible Party relationships.* The recipient must require each prospective contractor to provide with its bid or proposal:

(i) Information on its financial and business relationship with all PRPs at the site and with the contractor's parent companies, subsidiaries, affiliates, subcontractors, or current clients at the site. Prospective contractors under a Core Program Cooperative Agreement must provide comparable information for all sites within the recipient's jurisdiction. (This disclosure requirement encompasses past financial and business relationships, including services related to any proposed or pending litigation, with such parties);

(ii) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; and

(iii) A statement that it shall disclose immediately any such information discovered after submission of its bid or proposal or after award. The recipient shall evaluate such information and if a member of the contract team has a conflict of interest which prevents the team from serving the best interests of the recipient, the prospective contractor may be declared nonresponsible and the contract awarded to the next eligible bidder or offeror.

(2) *Conflict of interest*—(i) *Conflict of interest notification.* The recipient must require the contractor to notify the recipient of any actual, apparent, or potential conflict of interest regarding any individual working on a contract assignment or having access to information regarding the contract. This notification shall include both organizational conflicts of interest and personal conflicts of interest. If a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict of interest situation.

(ii) *Contract provisions.* The recipient must incorporate the following provisions or their equivalents into all contracts, except those for well-drilling, fence erecting, plumbing, utility hook-ups, security guard services, or electrical services:

(A) *Contractor data.* The contractor shall not provide data generated or otherwise obtained in the performance of contractor responsibilities under a contract to any party other than the recipient, EPA, or its authorized agents for the life of the contract, and for a period of five years after completion of the contract.

(B) *Employment.* The contractor shall not accept employment from any party other than the recipient or Federal agencies for work directly related to the site(s) covered under the contract for five years after the contract has terminated. The recipient agency may exempt the contractor from this requirement through a written release. This release must include EPA concurrence.

(3) *Certification of independent price determination.* The recipient must require that each contractor include in its bid or proposal a certification of independent price determination. This document certifies that no collusion, as defined by Federal and State antitrust laws, occurred during bid preparation.

(4) *Recipient's Contractors.* The recipient must require its contractor to comply with the requirements in §§ 35.6270(a) (1) and (2); 35.6320 (a) and (b); 35.6335; 35.6700; and 35.6705. For additional contractor requirements, see also §§ 35.6710(c); 35.6590(c); and 35.6610.

§ 35.6555 Competition.

The recipient must conduct all procurement transactions in a manner providing maximum full and open competition.

(a) *Restrictions on competition.* Inappropriate restrictions on competition include the following:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding requirements;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive awards to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a "brand name" product, instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) *Geographic and Indian Tribe preferences*—(1) *Geographic.* When conducting a procurement, the recipient must prohibit the use of statutorily or administratively imposed in-State or local geographical preferences in evaluating bids or proposals. However, nothing in this section preempts State licensing laws. In addition, when contracting for architectural and engineering (A/E) services, the recipient may use geographic location as a selection criterion, provided that when geographic location is used, its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(2) *Indian Tribe.* If the project benefits Indians, the recipient must comply with the Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. 93-638).

(c) *Written specifications.* The recipient's written specifications must include a clear and accurate description of the technical requirements and the qualitative nature of the material, product or service to be procured.

(1) This description must not contain features which unduly restrict competition, unless the features are necessary to:

(i) Test or demonstrate a specific thing;

(ii) Provide for necessary interchangeability of parts and equipment; or

(iii) Promote innovative technologies.

(2) The recipient must avoid the use of detailed product specifications if at all possible.

(d) *Public notice.* When soliciting bids or proposals, the recipient must allow sufficient time (generally 30 calendar days) between public notice of the proposed project and the deadline for receipt of bids or proposals. The recipient must publish the public notice in professional journals, newspapers, or publications of general circulation over a reasonable area.

(e) *Prequalified lists.* Recipients may use prequalified lists of persons, firms, or products to acquire goods and services. The list must be current and include enough qualified sources to ensure maximum open and free competition. Recipients must not preclude potential bidders from qualifying during the solicitation period.

§ 35.6560 Master list of debarred, suspended, and voluntarily excluded persons.

While evaluating bids or proposals, the recipient must consult the most current "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" to ensure that the firms submitting proposals are not prohibited from participation in assistance programs. The recipient must comply with the requirements regarding subawards to debarred and suspended parties described in 40 CFR 31.35.

§ 35.6565 Procurement methods.

The recipient must comply with the requirements for payment to consultants described in 40 CFR 31.36(j). In addition, the recipient must comply with the following requirements:

(a) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, the recipient must obtain and document price or rate quotations from an adequate number of qualified sources.

(b) *Sealed bids (formal advertising).* (For a remedial action award contract, except for Architectural/Engineering services and post-removal site control, the recipient must obtain the award official's approval to use a procurement method other than the sealed bid method.) Bids are publicly solicited and a fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

(1) In order for the recipient to use the sealed bid method, the following conditions must be met:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If the recipient uses the sealed bid method, the recipient must comply with the following requirements:

(i) Publicly advertise the invitation for bids and solicit bids from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(ii) The invitation for bids, which must include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) Publicly open all bids at the time and place prescribed in the invitation for bids;

(iv) Award the fixed-price contract in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, the recipient shall consider factors such as discounts, transportation cost, and life cycle costs in determining which bid is lowest. The recipient may only use payment discounts to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) If there is a sound documented reason, the recipient may reject any or all bids.

(c) *Competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If the recipient uses the competitive proposal method, the following requirements apply:

(1) Recipients must publicize requests for proposals and all evaluation factors and must identify their relative importance. The recipient must honor any response to publicized requests for proposals to the maximum extent practical;

(2) Recipients must solicit proposals from an adequate number of qualified sources;

(3) Recipients must have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(4) Recipients must award the contract to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) Recipients may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitor's qualifications are evaluated and the most qualified competitor, is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, may only be used in the procurement of A/E professional services. The recipient may not use this method to purchase other types of services even though A/E firms are a potential source to perform the proposed effort.

(d) *Noncompetitive proposals.* (1) The recipient may procure by noncompetitive proposals only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals, and one of the following circumstances applies:

(i) The item is available only from a single source;

(ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (a declaration of an emergency under State law does not necessarily constitute an emergency under the EPA Superfund program's criteria);

(iii) The award official authorized noncompetitive proposals; or

(iv) After solicitation of a number of sources, competition is determined to be inadequate.

(2) When using noncompetitive procurement, the recipient must conduct a cost analysis in accordance with the requirements described in § 35.6585 of this subpart.

§ 35.6570 Use of the same engineer during subsequent phases of response.

(a) If the public notice clearly stated the possibility that the firm or individual selected could be awarded a contract for follow-on services and initial procurement complied with the procurement requirements of this subpart, the recipient of a CERCLA remedial response Cooperative Agreement may use the engineer procured to conduct any or all of the

follow-on engineering activities without going through the public notice and evaluation procedures.

(b) The recipient may also use the same engineer during subsequent phases of the project in the following cases:

(1) Where the recipient conducted the RI, FS, or design activities without EPA assistance but is using CERCLA funds for follow-on activities, the recipient may use the engineer for subsequent work provided the recipient certifies:

(i) That it complied with the procurement requirements in § 35.6565 of this subpart when it selected the engineer and the code of conduct requirements described in 40 CFR 31.36(b)(3).

(ii) That any CERCLA-funded contract between the engineer and the recipient meets all of the other provisions as described in the procurement requirements in this subpart.

(2) Where EPA conducted the RI, FS, or design activities but the recipient will assume the responsibility for subsequent phases of response under a Cooperative Agreement, the recipient may use, with the award official's approval, EPA's engineer contractor without further public notice or evaluation provided the recipient follows the rest of the procurement requirements of this subpart to award the contract.

§ 35.6575 Restrictions on types of contracts.

(a) *Prohibited contracts.* The recipient's procurement system must not allow cost-plus-percentage-of-cost (e.g., a multiplier which includes profit) or percentage-of-construction-cost types of contracts.

(b) *Removal.* Under a removal Cooperative Agreement, the recipient must award a fixed price contract (lump sum, unit price, or a combination of the two) when procuring contractor support, regardless of the procurement method selected, unless the recipient obtains the award official's prior written approval.

(c) *Time and material contracts.* The recipient may use time and material contracts only if no other type of contract is suitable, and if the contract includes a ceiling price that the contractor exceeds at its own risk.

§ 35.6580 Contracting with minority and women's business enterprises (MBE/WBE), small businesses, and labor surplus area firms.

(a) *Procedures.* The recipient must comply with the six steps described in 40 CFR 31.36(e)(2) to ensure that MBEs, WBEs, and small businesses are used whenever possible as sources of supplies, construction, and services. Tasks to encourage small, minority, and women's business utilization in the Superfund program are eligible for funding under Core Program Cooperative Agreements.

(b) *Labor surplus firms.* EPA encourages recipients to procure supplies and services from labor surplus area firms.

(c) *"Fair share" objectives.* It is EPA's policy that recipients award a fair share of contracts to small, minority and women's businesses. The policy requires that fair share objectives for minority and women-owned business enterprises be negotiated with the States and/or recipients, but does not require fair share objectives be established for small businesses.

(1) Each recipient must establish an annual "fair share" objective for MBE and WBE use. A recipient is not required to attain a particular statistical level of participation by race, ethnicity, or gender of the contractor's owners or managers.

(2) If the recipient is awarded more than one Cooperative Agreement during the year, the recipient may negotiate an annual fair share for all Cooperative Agreements for that year. It is not necessary to have a fair share for each Cooperative Agreement. When a Cooperative Agreement is awarded to a recipient with which a "fair share" agreement has not been negotiated, the recipient must not award any contracts under the Cooperative Agreement until the recipient has negotiated a fair share objective with EPA.

§ 35.6585 Cost and price analysis.

(a) *General.* The recipient must conduct and document a cost or price analysis in connection with every procurement action including contract modification.

(1) *Cost analysis.* The recipient must conduct and document a cost analysis for all negotiated contracts over $25,000 and for all change orders regardless of price. A cost analysis is not required when adequate price competition exists and the recipient can establish price reasonableness. The recipient must base its determination of price reasonableness on a catalog or market price of a commercial product sold in substantial quantities to the general public, or on prices set by law or regulation.

(2) *Price analysis.* In all instances other than those described in (a)(1) of this section, the recipient must perform a price analysis to determine the reasonableness of the proposed contract price.

(b) *Profit analysis.* For each contract in which there is no price competition and in all cases in which cost analysis is performed, the recipient must negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

§ 35.6590 Bonding and insurance.

(a) *General.* The recipient must meet the requirements regarding bonding described in 40 CFR 31.36(h). The recipient must clearly and accurately state in the contract documents the bonds and insurance requirements, including the amounts of security coverage that a bidder or offeror must provide.

(b) *Indemnification.* When adequate pollution liability insurance is not available to the contractor, EPA may indemnify response contractors for liability related to damage from releases arising out of the contractor's negligent performance. The recipient must comply with the requirements regarding indemnification described in section 119 of CERCLA.

(c) *Accidents and catastrophic loss.* The recipient must require the contractor to provide insurance against accidents and catastrophic loss to manage any risk inherent in completing the project.

§ 35.6595 Contract provisions.

(a) *General.* Each contract must be a sound and complete agreement, and include the following provisions:

(1) Nature, scope, and extent of work to be performed;

(2) Time frame for performance;

(3) Total cost of the contract; and

(4) Payment provisions.

(b) *Other contract provisions.* Recipients' contracts must include the following provisions:

(1) *Energy efficiency.* A contract must comply with mandatory standards and policies on energy efficiency contained in the State's energy conservation plan which is issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

(2) *Violating facilities.* Contracts in excess of $100,000 must contain a provision which requires contractor compliance with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR part 15) which

prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt Federal contracts, grants or loans.

(3) *Patents, inventions, and copyrights.* All contracts must include notice of EPA requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed while conducting work under a contract. This notice shall also include EPA requirements and regulations pertaining to copyrights and rights to data contained in 40 CFR 31.34.

(4) *Labor standards.* The recipient must include a copy of EPA Form 5720–4 ("Labor Standards Provisions for Federally Assisted Construction Contracts") in each contract for construction (as defined by the Secretary of Labor in 29 CFR part 5). The form contains the Davis-Bacon Act requirements (40 U.S.C. 276a–276a–7), the Copeland Regulations (29 CFR part 3), the Contract Work Hours and Safety Standards Act Overtime Compensation (940 U.S.C. 327–333), and the nondiscrimination provisions in Executive Order 11246, as amended.

(5) *Conflict of interest.* The recipient must include provisions pertaining to conflict of interest as described in § 35.6550(b)(2)(ii) of this subpart.

(c) *Model clauses.* The recipient must comply with the requirements regarding model contract clauses described in 40 CFR 33.1030 (1987).

§ 35.6600 Contractor claims.

(a) *General.* The recipient must conduct an administrative and technical review of each claim before EPA will consider funding these costs.

(b) *Claims settlement.* The recipient may incur costs (including legal, technical and administrative) to assess the merits of or to negotiate the settlement of a claim by or against the recipient under a contract, provided:

(1) The claim arises from work within the scope of the Cooperative Agreement;

(2) A formal Cooperative Agreement amendment is executed specifically covering the costs before they are incurred;

(3) The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the recipient; and

(4) The award official determines that there is a significant Federal interest in the issues involved in the claim.

(c) *Claims defense.* The recipient may incur costs (including legal, technical and administrative) to defend against a contractor claim for increased costs under a contract or to prosecute a claim to enforce a contract provided:

(1) The claim arises from work within the scope of the Cooperative Agreement;

(2) A formal Cooperative Agreement amendment is executed specifically covering the costs before they are incurred;

(3) Settlement of the claim cannot occur without arbitration or litigation;

(4) The claim does not result from the recipient's mismanagement;

(5) The award official determines that there is a significant Federal interest in the issues involved in the claim; and

(6) In the case of defending against a contractor claim, the claim does not result from the recipient's responsibility for the improper action of others.

§ 35.6605 Privity of contract.

Neither EPA nor the United States shall be a party to any contract nor to any solicitation or request for proposals.

§ 35.6610 Contracts awarded by a contractor.

The recipient must require its contractor to comply with the following provisions in the award of contracts (i.e. subcontracts). (This section does not apply to a supplier's procurement of materials to produce equipment, materials and catalog, off-the-shelf, or manufactured items.)

(a) The requirements regarding debarred, suspended, and voluntarily excluded persons in § 35.6560 of this subpart.

(b) The limitations on contract award in § 35.6550(a)(8) of this subpart.

(c) The requirements regarding minority and women's business enterprises, and small business in § 35.6580 of this subpart.

(d) The requirements regarding specifications in § 35.6555 (a)(6) and (c) of this subpart.

(e) The Federal cost principles in 40 CFR 31.22.

(f) The prohibited types of contracts in § 35.6575(a) of this subpart.

(g) The cost, price analysis, and profit analysis requirements in § 35.6585 of this subpart.

(h) The applicable provisions in § 35.6595 (b) and (c) of this subpart.

(i) The applicable provisions in § 35.6555(b)(2).

Reports Required Under a Cooperative Agreement

§ 35.6650 Quarterly progress reports.

(a) *Reporting frequency.* The recipient must submit progress reports quarterly on the activities delineated in the Statement of Work. EPA may not require submission of progress reports more often than quarterly. The reports must be submitted within 30 days of the end of each Federal Fiscal quarter.

(b) *Content.* The quarterly progress report must contain the following information:

(1) An explanation of work accomplished during the reporting period, delays, or other problems, if any, and a description of the corrective measures that are planned. For pre-remedial Cooperative Agreements, the report must include a list of the site-specific products completed and the estimated number of technical hours spent to complete each product.

(2) A comparison of the percentage of the project completed to the project schedule, and an explanation of significant discrepancies.

(3) A comparison of the estimated funds spent to date to planned expenditures and an explanation of significant discrepancies. For remedial, enforcement, and removal reports, the comparison must be on a per task basis.

(4) An estimate of the time and funds needed to complete the work required in the Cooperative Agreement, a comparison of that estimate to the time and funds remaining, and a justification for any increase.

§ 35.6655 Notification of significant developments.

Events may occur between the scheduled performance reporting dates which have significant impact upon the Cooperative Agreement-supported activity. In such cases, the recipient must inform the EPA project officer as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

§ 35.6660 Property inventory reports.

(a) *CERCLA-funded property*—(1) *Content.* The report must contain the following information:

(i) Classification and value of remaining supplies;

(ii) Description of all equipment purchased with CERCLA funds, including its current condition;

(iii) Verification of the current use and continued need for the equipment by

site, activity, and operable unit, as applicable;

(iv) Notification of any property which has been stolen or vandalized; and

(v) A request for disposition instructions for any equipment no longer needed on the project.

(2) *Reporting frequency.* The recipient must submit an inventory report to EPA at the following times:

(i) Within 90 days after completing any CERCLA-funded project or any response activity at a site; and

(ii) When the equipment is no longer needed for any CERCLA-funded project or any response activity at a site.

(b) *Federally owned property*—(1) *Content.* The recipient must include the following information for each federally owned item in the inventory report:

(i) Description;

(ii) Decal number;

(iii) Current condition; and

(iv) Request for disposition instructions.

(2) *Reporting frequency.* The recipient must submit an inventory report to the appropriate EPA property accountable officer at the following times:

(i) Annually, due to EPA on the anniversary date of the award;

(ii) When the property is no longer needed; and

(iii) Within 90 days after the end of the project period.

§ 35.6665 Procurement reports.

(a) *Department of Labor (DOL) Reports*—(1) *Content.* The recipient must notify the DOL Regional Office of Compliance, in writing, of each construction contract which has or is expected to have an aggregate value of over $10,000 within a 12-month period. The report must include the following:

(i) Construction contractor's name, address, telephone number, and employee identification number;

(ii) Award amount;

(iii) Estimated start and completion dates; and

(iv) Project number, name, and site location.

(2) *Reporting frequency.* The recipient must notify the DOL Office of Compliance within 10 calendar days after the award of each such construction contract. The recipient must submit a copy of the report to the EPA project officer.

(b) *Minority and women's business enterprise (MBE/WBE) Reports.* (1) The recipient must report on its use of MBE and WBE firms by submitting a completed Minority and Women's Business Utilization Report (SF–334) to the award official. Reporting commences with the recipient's award of its first contract and continues until it and its contractors have awarded their last contract for the activities or tasks identified in the Cooperative Agreement. The recipient must submit the MBE/WBE Utilization Report within 30 days after the end of each Federal fiscal quarter, regardless of whether the recipient awards a contract to an MBE or WBE during that quarter.

(2) The recipient must also report on its efforts to encourage MBE participation in the Superfund program pursuant to CERCLA § 105(f). Information on the recipient's efforts to encourage MBE participation in the Superfund program may be included in each SF–334 submitted quarterly, but is required in the SF–334 submitted for the fourth quarter, due November 1 of each year.

§ 35.6670 Financial reports.

(a) *General.* The recipient must comply with the requirements regarding financial reporting described in 40 CFR 31.41.

(b) *Financial Status Report*—(1) *Content.* (i) The Financial Status Report (SF–269) must include financial information by site, activity, and operable unit, as applicable.

(ii) A final Financial Status Report (FSR) must have no unliquidated obligations. If any obligations remain unliquidated, the FSR is considered an interim report and the recipient must submit a final FSR to EPA after liquidating all obligations.

(2) *Reporting frequency.* The recipient must file a Financial Status Report as follows:

(i) Annually due 90 days after the end of the Federal fiscal year or as specified in the Cooperative Agreement; or if quarterly or semiannual reports are required in accordance with 40 CFR 31.41(b)(3), due 30 days after the reporting period;

(ii) Within 90 calendar days after completing each CERCLA-funded response activity at a site (submit the FSR only for each completed activity); and

(iii) Within 90 calendar days after termination or closeout of the Cooperative Agreement.

Records Requirements Under a Cooperative Agreement

§ 35.6700 Project records.

The lead agency for the response action must compile and maintain an administrative record consistent with section 113 of CERCLA, the National Contingency Plan, and relevant EPA policy and guidance. In addition, recipients of assistance (whether lead or support agency) are responsible for maintaining project files as described below.

(a) *General.* The recipient must maintain project records by site, activity, and operable unit, as applicable.

(b) *Financial records.* The recipient must maintain records which support the following items:

(1) Amount of funds received and expended; and

(2) Direct and indirect project cost.

(c) *Property records.* The recipient must maintain records which support the following items:

(1) Description of the property;

(2) Manufacturer's serial number, model number, or other identification number;

(3) Source of the property, including the assistance identification number;

(4) Information regarding whether the title is vested in the recipient or EPA;

(5) Unit acquisition date and cost;

(6) Percentage of EPA's interest;

(7) Location, use and condition (by site, activity, and operable unit, as applicable) and the date this information was recorded; and

(8) Ultimate disposition data, including the sales price or the method used to determine the price, or the method used to determine the value of EPA's interest for which the recipient compensates EPA in accordance with §§ 35.6340, 35.6345, and 35.6350 of this subpart.

(d) *Procurement records*—(1) *General.* The recipient must maintain records which support the following items, and must make them available to the public:

(i) The reasons for rejecting any or all bids; and

(ii) The justification for a procurement made on a noncompetitively negotiated basis.

(2) *Procurements in excess of $25,000.* The recipient's records and files for procurements in excess of $25,000 must include the following information, in addition to the information required in paragraph (d)(1) of this section:

(i) The basis for contractor selection;

(ii) A written justification for selecting the procurement method;

(iii) A written justification for use of any specification which does not provide for maximum free and open competition;

(iv) A written justification for the choice of contract type; and

(v) The basis for award cost or price, including a copy of the cost or price analysis made in accordance with § 35.6585 of this subpart and documentation of negotiations.

(e) *Other records.* The recipient must maintain records which support the following items:

(1) Time and attendance records and supporting documentation;

(2) Documentation of compliance with statutes and regulations that apply to the project; and

(3) The number of site-specific technical hours spent to complete each pre-remedial product.

§ 35.6705 Records retention.

(a) *Applicability.* This requirement applies to all financial and programmatic records, supporting documents, statistical records, and other records which are required to be maintained by the terms of this subpart, program regulations, or the Cooperative Agreement, or are otherwise reasonably considered as pertinent to program regulations or the Cooperative Agreement.

(b) *Length of retention period.* The recipient must maintain all records for 10 years following submission of the final Financial Status Report unless otherwise directed by the EPA award official, and must obtain written approval from the EPA award official before destroying any records. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later.

(c) *Substitution of microform.* Microform copies may be substituted for the original records. The recipient must have written EPA approval before destroying original records. The microform copying must be performed in accordance with the technical regulations concerning micrographics of Federal Government records (36 CFR part 1230) and EPA records management procedures (EPA Order 2160).

(d) *Starting date of retention period.* The recipient must comply with the requirements regarding the starting dates for records retention described in 40 CFR 31.42(c) (1) and (2).

§ 35.6710 Records access.

(a) *Recipient requirements.* The recipient must comply with the requirements regarding records access described in 40 CFR 31.42(e).

(b) *Availability of records.* The recipient must, with the exception of certain policy, deliberative, and enforcement documents which may be held confidential, ensure that all files are available to the public.

(c) *Contractor requirements.* The recipient must require its contractor to comply with the requirements regarding records access described in 40 CFR 31.36(i)(10).

Other Administrative Requirements for Cooperative Agreements

§ 35.6750 Modifications.

The recipient must comply with the requirements regarding changes to the Cooperative Agreement described in 40 CFR 31.30.

§ 35.6755 Monitoring program performance.

The recipient must comply with the requirements regarding program performance monitoring described in 40 CFR 31.40 (a) and (e).

§ 35.6760 Enforcement and termination for convenience.

The recipient must comply with all terms and conditions in the Cooperative Agreement, and is subject to the requirements regarding enforcement of the terms of an award and termination for convenience described in 40 CFR 31.43 and 31.44.

§ 35.6765 Non-Federal audit.

The recipient must comply with the requirements regarding non-Federal audits described in 40 CFR 31.26.

§ 35.6770 Disputes.

The recipient must comply with the requirements regarding dispute resolution procedures described in 40 CFR 31.70.

§ 35.6775 Exclusion of third-party benefits.

The Cooperative Agreement benefits only the signatories to the Cooperative Agreement.

§ 35.6780 Closeout.

(a) Closeout of a Cooperative Agreement, or an activity under a Cooperative Agreement, can take place in the following situations:

(1) After the completion of all work for a response activity at a site; or

(2) After all activities under a Cooperative Agreement have been completed; or

(3) Upon termination of the Cooperative Agreement.

(b) The recipient must comply with the closeout requirements described in 40 CFR 31.50 and 31.51.

§ 35.6785 Collection of amounts due.

The recipient must comply with the requirements described in 40 CFR 31.52 regarding collection of amounts due.

§ 35.6790 High risk recipients.

If EPA determines that a recipient is not responsible, EPA may impose restrictions on the award as described in 40 CFR 31.12.

Requirements for Administering a Superfund State Contract (SSC)

§ 35.6800 General.

An SSC is required when either EPA or a political subdivision is the lead agency for a CERCLA response. This rule does not address whether Indian Tribes are subject to the requirements in § 35.6805(i)(2) (See § 35.610(a)).

(a) *EPA-lead SSC (Two-party SSC).* (1) An SSC with a State or Indian Tribe is required before EPA can obligate or transfer funds for an EPA-lead remedial action.

(2) The State must comply with the requirements described in §§ 35.6805 and 35.6815 of this subpart. The Indian Tribe must comply with the requirements described in § 35.6805 (a) through (h), (i)(4), (l) through (v); § 35.6815(b); and, if appropriate, § 35.6815 (c) and (d).

(b) *Political subdivision-lead SSC (Three-party SSC).* (1) To ensure State involvement as required under section 121(f) of CERCLA and subpart F of the National Contingency Plan, an SSC is required between EPA, the State and a political subdivision before a political subdivision may take the lead for any phase of remedial response. The SSC must contain, or must be amended to include, the State's assurances pursuant to § 35.6805(i) of this subpart before EPA obligates funds for remedial action set forth in the Statement of Work of the SSC.

(2) Both the State and the political subdivision must comply with the requirements described in §§ 35.6805, 35.6815, and 35.6820 of this subpart.

§ 35.6805 Contents of an SSC.

The SSC must include the following provisions:

(a) *General authorities,* which documents the relevant statutes and regulations (of each government entity that is a party to the contract) governing the contract;

(b) *Purpose of the SSC,* which describes the response activities to be conducted and the benefits to be derived;

(c) *Negation of agency relationship* between the signatories, which states that no signatory of the SSC can represent or act on the behalf of any other signatory in any matter associated with the SSC;

(d) *A site description,* pursuant to § 35.6105(a)(2)(i) of this subpart;

(e) *A site-specific Statement of Work,* pursuant to § 35.6105(a)(2)(ii) of this subpart and a statement of whether the contract constitutes an initial SSC or an amendment to an existing contract;

(f) *A statement of intention to follow EPA policy and guidance;*

(g) *A project schedule* to be prepared during response activities;

(h) *A statement desinating a primary contact* for each party to the contract, which designates representatives to act on behalf of each signatory in the implementation of the contract. This statement must document the authority of each project manager to approve modifications to the project so long as such changes are within the scope of the contract and do not significantly impact the SSC;

(i) *The CERCLA assurances,* as appropriate, as described below:

(1) Operation and maintenance. The State must provide an assurance pursuant to § 35.6105(b)(1) of this subpart.

(2) Twenty-year waste capacity. The State must provide an assurance pursuant to § 35.6105(b)(3) of this subpart.

(3) Off-site storage, treatment, or disposal. If off-site storage, destruction, treatment, or disposal is required, the State must provide an assurance pursuant to § 35.6105(b)(4) of this subpart; the political subdivision may not provide this assurance.

(4) Real Property Acquisition. When real property must be acquired, the State must provide an assurance pursuant to § 35.6105(b)(5) of this subpart. An Indian Tribe must provide an assurance pursuant to § 35.6110(b)(2).

(5) Provision of State cost share. The State must provide assurances for cost sharing pursuant to § 35.6105(b)(2). Even if the political subdivision is providing the actual cost share, the State must guarantee payment of the cost share in the event of default by the political subdivision.

(j) *Cost-share conditions,* which include:

(1) An estimate of the response action cost (excluding EPA's indirect costs) that requires cost share;

(2) The basis for arriving at this figure (See § 35.6285(c) for credit provisions); and

(3) The payment schedule as negotiated by the signatories, and consistent with either a lump-sum or incremental-payment option. Final payment must be made by completion of all activities in the site-specific Statement of Work with the exception of any change orders and claims handled during reconciliation of the SSC;

(k) *Reconciliation provision,* which states that the SSC remains in effect until the financial settlement of project costs and final reconciliation of response costs (including all change orders, claims, overpayments, reimbursements, etc.) ensure that both EPA and the State have satisfied the cost share requirement contained in section 104 of CERCLA, as amended. Overpayments in an SSC may not be used to meet the cost-sharing obligation at another site. Reimbursements for any overpayment will be made to the payer identified in the SSC.

(l) *Amendability of the SSC,* which provides that:

(1) Formal amendments are required when alterations to CERCLA-funded activities are necessary or when alterations impact the State's assurances pursuant to the National Contingency Plan and CERCLA, as amended. Such amendments must include a Statement of Work for the amendment as described in § 35.6805(e) above;

(2) Any change(s) in the SSC must be agreed to, in writing, by the signatories, except as provided elsewhere in the SSC, and must be reflected in all response agreements affected by the change(s);

(m) *List of Support Agency Cooperative Agreements* that are also in place for the site;

(n) *Litigation,* which describes EPA's right to bring an action against any party under section 106 of CERCLA to compel cleanup, or for cost recovery under section 107 of CERCLA.

(o) *Sanctions for failure to comply with SSC terms,* which states that if the signatories fail to comply with the terms of the SSC, EPA may proceed under the provisions of section 104(d)(2) of CERCLA and may seek in the appropriate court of competent jurisdiction to enforce the SSC or to recover any funds advanced or any costs incurred due to a breach of the SSC. Other signatories to the SSC may seek remedies in the appropriate court of competent jurisdiction.

(p) *Site access.* The State or political subdivision or Indian Tribe is expected to use its own authority to secure access to the site and adjacent properties, as well as all rights-of-way and easements necessary to complete the response actions undertaken pursuant to the SSC;

(q) *Joint inspection of the remedy.* Following completion of the remedial action, the State and EPA will jointly inspect the project. The SSC must include a statement indicating the State's approval of the final remedial action report submitted by EPA.

(r) *Exclusion of third-party benefits,* which states that the SSC is intended to benefit only the signatories of the SSC, and extends no benefit or right to any third party not a signatory to the SSC; and

(s) *Any other provision* deemed necessary by all parties to facilitate the response activities covered by the SSC.

(t) *State review.* The State or Indian Tribe must review and comment on the response actions pursuant to the SSC. Unless otherwise stated in the SSC, all time frames for review must follow those prescribed in the NCP.

(u) *Responsible party activities,* which states that if a Responsible Party takes over any activities at the site, the SSC will be modified or terminated, as appropriate.

(v) *Out-of-State or out-of-Indian Tribal jurisdiction transfers of CERCLA waste,* which states that, unless otherwise provided for by EPA or a political subdivision, the State or Indian Tribe must provide the notification requirements described in § 35.6120.

§ 35.6815 Administrative requirements.

In addition to the requirements specified in § 35.6805, the State and/or political subdivision must comply with the following:

(a) *Financial administration.* The State and/or political subdivision must comply with the following requirements regarding financial administration:

(1) *Payment.* The State may pay for its share of the costs of the response activities in cash or credit. As appropriate, specific credit provisions should be included in the SSC consistent with the requirements described in § 35.6285(c) of this subpart. The State may not pay for its cost share using in-kind services, unless the State has entered into a support agency Cooperative Agreement with EPA. The use of the support agency Cooperative Agreement as a vehicle for providing cost share must be documented in the SSC. If the political subdivision agrees to provide all or part of the State's cost share pursuant to a political subdivision-lead Cooperative Agreement, the political subdivision may pay for those costs in cash or in-kind services under that agreement. The use of a political subdivision-lead Cooperative Agreement as a vehicle for providing cost share must also be documented in the SSC. The State or political subdivision must make payments during the course of the site-specific project and must complete payments by completion of activities in the site-specific Statement of Work. (See § 35.6255 of this subpart for

requirements concerning cost sharing under a support agency Cooperative Agreement.) The specific payment terms must be documented in the SSC pursuant to § 35.6805 of this subpart.

(2) *Collection of amounts due.* The State and/or political subdivision must comply with the requirements described in 40 CFR 31.52(a) regarding collection of amounts due.

(3) *Failure to comply with negotiated payment terms.* Failure to comply with negotiated payment terms may be construed as default by the State on its required assurances, even if the political subdivision is responsible for providing all or part of the cost share. (See § 35.6805(i)(5) of this subpart.)

(b) *Personal Property.* The State, Indian Tribe, or political subdivision is required to accept title. The following requirements apply to equipment used as all or part of the remedy:

(1) *Fixed in-place equipment.* EPA no longer has an interest in fixed in-place equipment once the equipment is installed.

(2) *Equipment that is an integral part of services to individuals.* EPA no longer has an interest in equipment that is an integral part of services to individuals, such as pipes, lines, or pumps providing hookups for homeowners on an existing water distribution system, once EPA certifies that the remedy is operational and functional.

(c) *Reports.* The State and/or political subdivision or Indian Tribe must comply with the following requirements regarding reports:

(1) *EPA-lead.* The nature and frequency of reports between EPA and the State or Indian Tribe will be specified in the SSC.

(2) *Political subdivision-lead.* The political subdivision must submit to the State a copy of all reports which the political subdivision is required to submit to EPA in accordance with the requirements of its Cooperative Agreement. (See § 35.6650 for requirements regarding quarterly progress reports.)

(d) *Records.* The State and political subdivision or Indian Tribe must maintain records on a site-specific basis. The State and political subdivision or Indian Tribe must comply with the requirements regarding record retention described in § 35.6705 and the requirements regarding record access described in § 35.6710.

§ 35.6820 Conclusion of the SSC.

In order to conclude the SSC, the signatories must:

(a) Satisfactorily complete the response activities at the site and make all payments based upon project costs determined in § 35.6805(j);

(b) Produce a final accounting of all project costs, including change orders and outstanding contractor claims; and

(c) Submit all State cost-share payments to EPA (see § 35.6805(i)(5)), undertake responsibility for O&M, and, if applicable, accept interest in real property (see § 35.6805(i)(4)).

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Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 318 and 320

Heat-Processing Procedures, Cooking Instructions, and Cooling, Handling, and Storage Requirements for Uncured Meat Patties; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318 and 320

[Docket No. 86-041R]

[RIN 0583-AA81]

Heat-Processing Procedures, Cooking Instructions, and Cooling, Handling, and Storage Requirements for Uncured Meat Patties

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; withdrawal and reproposal.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to specify heat-processing, cooling, handling, labeling and storage requirements for uncured meat patties, such as hamburgers, Salisbury steaks, breaded and battered chopped veal steaks, beef patties, and pork sausage patties. It would provide for the safe processing and handling and informative labeling of heat-processed (fully-cooked, partially-cooked, and char-marked), uncured meat patties to assist in assuring that such products are wholesome and not adulterated or mislabeled when distributed to consumers. This proposed rule also provides for the reliance, in part, on Hazard Analysis and Critical Control Point (HACCP) principles in the production of heat-processed, uncured meat patties.

This proposed rule is a reproposal of the Notice of Proposed Rulemaking published on December 27, 1988, in the **Federal Register** (53 FR 52179), which is hereby withdrawn. Comments received on the December 27, 1988, proposed rule and other information available to FSIS have resulted in a number of changes to the proposed rule, prompting the Agency to provide an additional opportunity for comments before consideration is given to the issuance of a final regulation. However, because of the fact that recently, heat-processed, uncured meat patties were implicated in illnesses caused by *Escherichia coli* (*E. coli*) 0157:H7, and because microbiological analysis has indicated the presence of *Listeria monocytogenes* (*L. monocytogenes*) and *Salmonella* in heat-processed, uncured meat patties, the Agency has concluded that a potentially serious public health hazard exists and is limiting the comment period to 30 days from the date of this publication. A related Advance Notice of Proposed Rulemaking is published elsewhere in this issue of the **Federal Register.**

DATES: Comments must be received on or before July 5, 1990.

ADDRESSES: Written comments may be mailed to: Policy Office, Attn: Linda Carey, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Dr. Karen Wesson, Acting Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government aqencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). Althouqh the December 27, 1988, proposed rule stated 130 establishments produced heat-processed, uncured meat patties, a more thorough review of product labels shows approximately 225 establishments produce heat-processed, uncured meat patties (such as hamburgers, Salisbury steaks, breaded and battered chopped veal steaks, beef patties, and pork sausage patties). Most of these establishments are considered to be small entities; however, the economic impact would not be significant for a substantial number of them.

For establishments producing fully-cooked, uncured meat patties, the proposed rule would provide some leeway in the heat-processing procedure to be used. However, the proposed temperature/time combination provision is more rigorous than that generally in use at present. Generally, current heat-processing procedures measure only the minimum internal temperature of the patties; the length of time that the temperature is maintained (dwell time) after removal from the heat source is not monitored. The proposed rule would require both the temperature and the time to be accounted for; the higher the temperature, the shorter the time required for maintaining that temperature in the patties. Thus, the impact on most establishments would be an increased heat-processing temperature/time combination. Changes in the establishment's heat-processing practice would affect the yield (the weight difference between the raw and heat-processed patty due to the loss of moisture and fat during the heat-process); the greater the change, the greater the yield loss. Most establishments sell their heat-processed patties according to the finished weight. However, the Agency believes that changes will not result in a significant economic impact on the small processors. Other provisions of the proposed rule (including raw material handling, cooling, and sanitation) are not expected to economically impact establishments. These provisions are basic, good manufacturing practices. Based on the Agency's knowledge and practice of the processing of patties, the Agency believes that establishments generally comply with these provisions already.

The category of partially-cooked, uncured meat patties is new. Currently, labels for heat-processed patties do not distinguish between those partially-cooked and fully-cooked, which may lead consumers to believe that heat-processed patties are all fully-cooked and therefore, ready-to-eat. This proposed rule would require partially-cooked patties to be produced according to good manufacturing practices, to be labeled as partially-cooked, and to bear cooking instructions on the label. This new category of product would provide establishments an opportunity to develop an alternative market for patties not meeting the fully-cooked criteria of the proposed rule. In addition, this new category of product would provide establishments an alternative to changing their heat-processing procedures.

The proposed heat-processing requirements for char-marked, uncured meat patties is fully in accord with current good manufacturing practices and is not expected to affect establishments, with the exception that more care might be required by the establishments to avoid temperature

abuse (exposing the product to non-refrigerated temperatures for long periods of time or raising the internal temperature to temperatures optimal for pathogenic micoorganism growth) of product.

Paperwork Requirements

This proposed rule requires that all establishments which encounter a monitoring defect or process deviation create and maintain a written record of the nature of the defect or deviation as well as the steps that will be taken to prevent a recurrence of the monitoring defect or process deviation. This written record would be on file in the establishment and available for review, upon request, by any duly authorized representative of the Secretary. These recordkeeping requirements were approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501), and identified as OMB #0583-0056.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office at the address shown above and should refer to the docket number located in the heading of this document. All comments submitted in response to this proposal will be available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) requires the Secretary of Agriculture to administer an inspection program that assures consumers that meat products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. Consistent with that requirement, on December 27, 1988, the Department published in the **Federal Register** (53 FR 52179) a proposed rule titled, "Processing Procedures and Cooking Instructions for Cooked, Uncured Meat Patties," hereinafter referred to as the December proposal. The primary purpose of that proposal was to set forth specific manufacturing, handling, labeling, and storage requirements for cooked (heat-processed), uncured meat patties. The provisions of the proposal for fully-cooked patties were designed to ensure the destruction of food-borne pathogens, such as *E. coli* 0157:H7 and *Salmonella*, before the patties leave the establishment; the provisions for partially-cooked or char-marked patties were designed to reduce the number of potential pathogens surviving the heat process. In addition, informative labeling of these partially cooked and char-marked patty products would assist consumers in the safe cooking of these products.

The December proposal was based on evidence of food-borne microbiological hazards in heat-processed patties that included data showing 54 Minnesota school children became ill due to 0157:H7, a pathogenic strain of *E. coli*. The illness was epidemiologically linked to consumption by the children of beef patties which were considered fully-cooked. Also, in a 1985 incident, *Salmonella* was detected in beef patties destined for a large public school system. These patties were also considered fully-cooked. However, *Salmonella* was discovered before the patties were consumed.

Need for This Proposed Regulation

Since publication of the December proposal, a case of Listerial meningitis was reported to the Centers for Disease Control (CDC) in April, 1989, involving an elderly woman who had cancer. The illness was epidemiologically linked to turkey frankfurters which were later found to contain *L. monocytogenes*. The company voluntarily recalled turkey frankfurters in commerce.

Elderly people with underlying health problems, pregnant women, and patients with suppressed immune systems are at greatest risk from listeriosis caused by *L. monocytogenes*. Typically, in this population of immune-impaired people, listeriosis is manifested as meningitis or meningo-encephalitis, which affects tissues around the brain or spine; it is also associated with septicemia (blood poisoning); and it can cause spontaneous abortions and stillbirths.

L. monocytogenes is often an environmental contaminant. It is capable of slow growth in raw and processed meat products at refrigeration temperature (40 °F.); whereas neither *E. coli* 0157:H7 nor *Salmonella* can grow at this low temperature. *L. monocytogenes* is also more resistant to heat than *E. coli* 0157:H7 or *Salmonella*. Two studies on heat lethality of *E. coli* 0157:H7, *L. monocytogenes*, and *Salmonella* confirm this resistance: The *Salmonella* study, contracted by the Agency and reported by Goodfellow and Brown (hereinafter referred to as "Goodfellow and Brown study"), and the Agency-contracted study on "Lethality of Heat to: *Listeria monocytogenes* Scott A and *Escherichia coli* 0157:H7, Part I: D-Value Determinations in Ground Beef and Turkey (hereinafter referred to as "ABC study")."[1, 2]

Because the organism is ubiquitous, without careful process controls, *L. monocytogenes* may contaminate heat-processed, ready-to-eat meat or poultry products after processing, both prior to and during product packaging. The American Meat Institute (AMI), in its *L. monocytogenes* monitoring program of ready-to-eat meats, stated that post-process contamination of these products (frankfurters, luncheon meats, and ham) appears to account for most of the listerial presence in finished product.[3] In February 1989, the Agency issued FSIS Directive 10,240.1, "*Listeria monocytogenes;* Testing Procedures and Sanitation Information."[4] This directive provided information on the Agency's microbiological sampling and testing program, and guidelines for establishments in cleaning and sanitizing equipment and facilities for the prevention of microbiological contamination. Similar sanitation requirements are included in this proposal.

While addressing comments on the December proposal, the Agency conducted a survey for *L. monocytogenes* and presence of catalase in samples of heat-processed meat patties.[5] The catalase test detects the presence of catalase, an enzyme in meat. Because heat processing at a temperature above 142 °F. destroys the enzyme, a positive test indicates the product would not have been sufficiently heat-processed to destroy the enzyme, thus indicating that *L. monocytogenes*, if present, would survive. To prevent post-heat-process

[1] Goodfellow, S.J., and W.L. Brown. 1976. Fate of *Salmonella* inoculated into beef for cooking. Journal of Food Protection 41:598–606. A copy of this study is available upon request in the Office of the FSIS Hearing Clerk, room 3171—South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[2] ABC Research, 1988. Unpublished. A copy of this study is available upon request in the Office of the FSIS Hearing Clerk, room 3171—South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[3] George D. Wilson. 1988. *Listeria monocytogenes*—1988. Reciprocal Meat Conference Proceedings. 41:11–13. A copy of this report is available upon request in the Office of the FSIS Hearing Clerk, room 3171—South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[4] A copy of FSIS Directive 10,240.1 is available upon request in the Office of the FSIS Hearing Clerk, room 3171—South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[5] A copy of this survey is available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

contamination of the samples, the patties were collected aseptically immediately after leaving the heating medium. Samples were collected from 33 establishments. Of the 33 patty samples, one beef and one pork sample were positive for *L. monocytogenes*. In addition, eight of the 33 patty samples were positive for catalase, one of which was also positive for *L. monocytogenes*. A review of the processing procedures submitted on label applications for the affected kinds of products, both from establishments generally and from the establishments with positive results for *L. monocytogenes* and/or catalase, revealed heat-processing temperature/time combinations ranging from 130 °F. with no stated time at that temperature (dwell time), to 160 °F. for 2 minutes. Most establishments, however, indicated they heat-processed the patties to at least 145 °F. with no dwell time.

The Agency conducted a second survey of heat-processed patties, similar to the first.[6] However, samples were also collected from frozen storage if freshly manufactured heat-processed patties were not available. Samples were collected from 31 establishments. Of the 31 patty samples, three beef samples, one pork sample, and one veal sample were positive for *L. monocytogens*. In addition, seven of the 31 patty samples were positive for catalase, two of which were also positive for *L. monocytogenes*. A review of the processing procedures as submitted on label applications, as well as the processing procedures submitted by the establishments with positive results for *L. monocytogenes* and/or catalase, revealed heat-processing temperatures ranging from 130 °F. with no stated dwell time, to 156 °F. with no stated dwell time. Most establishments, however, indicated they heat-processed the patties to at least 145 °F with no dwell time.

These two surveys indicate that *L. monocytogenes* survived the heat-process in seven of 64 samples from 50 different establishments. Because all samples positive for *L. monocytogenes* were collected immediately after heat processing, the presence of the organism could not be attributed to post-heat-process contamination. Catalase was present in 15 of the 64 samples. The Agency reviewed processing information from establishments with positive results for *L. monocytogenes* and/or catalase. The majority had heat-processing temperature/time combinations which should have been sufficient to destroy catalase, but apparently were not. This implies a lack of processing control.

This information further supports the Agency's decision to consider the issuance of a rule to govern the processing of uncured, heat-processed meat patties. The Agency has determined that without mandatory processing procedures, based on Hazard Analysis and Critical Control Point (HACCP) principles, the potential for food-borne health risks from heat-processed patties is likely to escalate.

Discussion of Comments on the December Proposal

FSIS received 227 comments in response to the December proposal—nine from meat processors, 10 from meat industry associations, two from consultants to the meat industry, one from the Food Research Institute at the University of Wisconsin-Madison, one from the Minnesota Department of Health, one from the American Veterinary Medical Association, one from the National Advisory Committee on Microbiological Criteria for Foods, and 202 (mostly form letters) from individuals. The following is a discussion of the issues raised by the commenters, grouped by subject, and the Agency's response to each. The subjects addressed, in order, are:

- Basis for Issuing the December Proposal
- Impact of the December Proposal on Other Agencies
- HACCP System Concept
- Raw Material Handling
- Heat-Processing Temperature and Time Requirements
- Non-Refrigerated Temperature Exposure Requirements
- Cooling Requirements
- Cooking Instruction Label Requirement
- Sanitary Handling Practices
- Microbiological Analysis Requirements
- Requirements for Handling Monitoring Defects, Process Deviations, and Process Failures
- Scope of the December Proposal

Basis for Issuing the December Proposal

1. Several commenters suggested that (A) there is no data to support the Agency's claim that food-borne pathogens survive in patties cooked to 145 °F.; (B) the *E. coli* and *Salmonella* incidents cited in the preamble of the proposed rule resulted from severely undercooked product in which maximum internal patty temperatures of less than 140 °F. were attained; and (C) the Agency overreacted to these isolated incidents.

The Agency responds as follows: (A) The temperature/time combination criteria of the December proposal were derived from the Goodfellow and Brown study, which was also used to establish the temperature and time combinations set forth in the regulations governing the requirements for the production of cooked beef, roast beef, and cooked corned beef (9 CFR 318.17). The "roast beef" rule has proven effective in protecting the public health as indicated by the absence of human salmonellosis from roast beef manufactured in compliance with the regulation. In addition, the International Commission on Microbiological Specifications for Foods, in its book *Microorganisms in Foods, (Volume) 4, Application of the Hazard Analysis Critical Control Point (HACCP) System to Ensure Microbiological Safety and Quality* stated that "Temperatures exceeding 66 °C. (151 °F.) in the coldest zone (usually the geometric center) of the patties will inactivate the non-sporing pathogens of concern in this product."[7] Thus, 145 °F., without a dwell time of at least 4 minutes (based upon the Goodfellow and Brown study), may not be sufficient to destroy food-borne pathogens such as *E. coli* 0157:H7, *L. monocytogenes, or Salmonella* in meat patties. Dwell times are important factors to be considered since patties continue to cook after removal from the heat medium due to latent heat. In any event, the Agency's two recent surveys found *L. monocytogenes* in patties that, according to the processing procedures, were to have been processed above 145 °F. Thus, in response to the commenter, 145 °F. is insufficient to destroy *L. monocytogenes*.

(B) Although unintentional undercooking was possibly a contributing cause in both of the incidents cited, the lack of established, effective manufacturing processes and handling practices for heat-processed, uncured meat patty processes based on a HACCP system created the potential for food-borne illness. Based upon the Goodfellow and Brown and the ABC

[6] A copy of this survey is available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[7] *Microorganisms in Foods, 4, Application of the Hazard Analysis Critical Control Point (HACCP) System to Ensure Microbiological Safety and Quality*. The International Commission on Microbiological Specifications for Foods (ICMSF) of the International Union of Microbiological Societies. Volume 4. Blackwell Scientific Publications, pages 287 and 288, 1988. A copy of these pages from the publication are available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

studies, both *E. coli* 0157:H7 and *Salmonella* could survive heat-processing at temperatures greater than 140 °F. unless there is sufficient dwell time.

(C) The Agency is charged with protecting the public health and has concluded that outbreaks such as those described herein indicate that there is a hazard to public health.

2. A few commenters requested an extension to the comment period—of up to 180 days—to more thoroughly research and assess the situation. In their opinion, the 30-day comment period was not sufficient for such research and assessment.

The Agency did not extend the comment period on the December proposal because the Agency received no data or offers of specific data to justify postponing the resolution of the public health issue the Agency is facing. However, the Agency has since assessed the comments, gathered more data from the patty surveys discussed earlier, and made numerous changes to the December proposal, leading to this reproposal. This proposal permits comments on essentially the same matters, as addressed in a more refined proposed rule responding to comments already received.

3. Numerous commenters stated that the Agency already has regulatory temperature requirements for heat-processed meat patties which are effective (temperatures of 145 °F. and 148 °F. were cited) and that, therefore, the December proposal was not necessary.

The commenters were mistaken; the Agency has no regulation which provides a required minimum temperature for heat-processed meat patties. There are, however, partial quality control programs enforced by the Agency for the Food and Nutrition Service of USDA which require some heat-processed product prepared for purchase by that Service to attain a minimum internal temperature of 145 °F.

4. A few commenters suggested the National Advisory Committee on Microbiological Criteria for Foods should have been consulted prior to issuing the December proposal.

Although the Agency does not have a legal obligation to clear proposed rulemaking through this committee, their technical evaluation of the December proposal was specifically requested and was considered along with the other comments.

5. A few commenters suggested the Agency's survey of heat-processing temperatures prescribed by the industry was not complete and did not accurately reflect current industry practices.

The cited survey resulted from the response to FSIS Notice 92–85 and showed a range in heat-processing temperatures of 90 °F. to 148 °F. for a variety of heat-processed, uncured meat products.[8] [9] The Notice, issued in response to the previously mentioned *Salmonella* incident of 1985, led to the gathering of information regarding processing procedures and cooking instructions from establishments producing heat-processed, uncured, comminuted meat products and specific poultry products. The reported temperatures were taken from label application forms, not actual processing measurements. The processing procedures, as contained on the label applications, stated only instantaneous heat-processing temperatures without regard to any temperature and time combination. Although not comprehensive, the information did provide impetus for the Agency to begin rulemaking.

The Agency's two most recent surveys for *L. monocytogenes* and catalase, mentioned earlier, showed that the heat-processes intended to be used by surveyed establishments ranged from 130 °F. with no stated dwell time, to 160 °F. for 2 minutes.

6. A couple of commenters suggested the Agency should enforce FSIS Notice 92–85 or issue a directive with temperature/time criteria prior to further rulemaking, as an interim measure for assuring wholesome and properly labeled, heat-processed patties.

To assess the heat-processing practices of the patty industry, as well as the need for a rule, the Agency first needed information. Since a notice can be issued more quickly than a directive or a regulation, the Agency issued FSIS Notice 92–85 to gather information and to inform the industry of potential food-borne pathogens associated with heat-processed, uncured products. When FSIS Notice 92–85 was issued, the response indicated that substantive changes needed to be made industry-wide in the processing practices for heat-processed, uncured meat patties. Under the Administrative Procedure Act these changes can only be required by rulemaking.

Impact of the December Proposal on Other Agencies

7. A couple of commenters contended the December proposal contradicted policies of the Food and Drug Administration (FDA) and that restaurants and other non-FSIS regulated facilities might be forced or encouraged to abide by the proposed rule. Specifically, commenters were referencing the Food Service Sanitation Manual of the FDA and its 140 °F. requirement for potentially hazardous foods requiring cooking (Section 2–403) and its 165 °F. requirement for re-heating potentially hazardous foods that have been cooked and then refrigerated (Section 2–406).[10]

The Agency had proposed the temperature and time combinations suggested by the Goodfellow and Brown study and the more recent ABC research as sufficient for microbiological safety in fully-cooked meat patties heat-processed in the establishment. As previously noted, the International Commission on Microbiological Specifications for Foods suggested that 66 °C. (151 °F.), with dwell times routinely achieved in food service establishments was adequate to destroy non-spore-forming pathogens and recommended this temperature as the minimum for cooking raw patties in food service establishments.

For re-heating partially-cooked or char-marked patties, the Agency's proposed cooking instruction of 160 °F. was also based upon the Goodfellow and Brown study. Because the Agency has concluded that an internal temperature in patties is not easily measured by consumers, the Agency has changed the wording of the proposed cooking instruction label for partially-cooked or char-marked patties to direct that the product be cooked "until juices run clear," instead of until achieving an "internal meat temperature of 160 °F." (This is further discussed in Comment 29).

8. Several commenters suggested that the Agency should have coordinated the December proposal with the Food and Nutrition Service (FNS); that the Child Nutrition Program, administered by FNS, has heat-processing criteria and yield requirements for heat-processed patties which conflict with the requirements of the proposed rule.

FNS was aware of the December proposal and offered no objections.

HACCP System Concept

9. Numerous commenters supported the HACCP-based regulatory approach of the December proposal, but opposed

[8] A copy of FSIS Notice 92–85 is available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[9] A copy of the survey is available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[10] Food Service Sanitation Manual, pages 28 and 29, 1976. U.S. Department of Health, Education, and Welfare Publication No. (FDA) 78–2081. A copy of these pages from the publication are available upon request in the Office of the FSIS Hearing Clerk, room 3171–South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

the particular procedure being prescribed; the commenters suggested the requirements should be more general to better allow for variations in processing procedures.

The Agency agrees that prescribing one processing procedure significantly narrows the variation permitted in industry processing practices. Therefore, in this reproposal FSIS has expanded the options open to processors. The Agency believes that this reproposal incorporates all known systems that achieve the required level of documented safety. For the future FSIS would consider amending these requirements based on comments, information, and scientific data on alternative processing procedures that may provide safe processing of heat-processed, uncured meat patties.

Further, the Agency does intend to consider permitting alternative procedures developed and approved by processing authorities. This is similar to the optional use of processing authorities permitted under the canned meat regulations, 9 CFR, subpart G—Canning and Canned Products, §§ 318.300 through 318.311, which provides more flexibility to the industry. This application of processing authority-based procedures is discussed in the Advance Notice of Proposed Rulemaking (ANPR) published elsewhere in this issue of the Federal Register. The ANPR is soliciting comments, information, and scientific data that may form the basis of future rulemaking on this point.

The prescribed procedures now being proposed identify the critical areas where control must be exercised (raw material handling, non-refrigerated temperature exposure, heat-processing, cooling, cooking instruction label requirement, and sanitary handling and storage practices) if product, and consumer exposure to microbial hazards is to be reduced to the lowest level possible. As proposed, under this rule establishments could develop auxiliary control point areas in addition to these critical control areas. Further, the establishment would have the latitude to choose the heat-processing temperature and time combination most suitable for its product and processing procedure. As noted, the time/temperature combinations are intended to be the lowest that will destroy all potentially harmful microbiological organisms, as demonstrated by available data.

10. One commenter suggested the HACCP-based proposal should require microbiological sampling routinely, not just in instances of process deviations.

The Agency agrees. Microbiological sampling to validate and verify the safe operation of the processing procedure is an important part of any HACCP-based system. However, because the Agency cannot further delay this rulemaking due to the potential health hazard of patties, it has determined it must address this more complex issue in a later rulemaking. The Agency is soliciting comments and information on this issue. A more thorough discussion of microbiological sampling and validation are included in the ANPR elsewhere in this issue of the Federal Register.

Raw Material Handling

11. A couple of commenters suggested there is no scientific basis for the 72 hour/40 °F. raw material handling criteria, and that such criteria should be based upon scientific data.

The Agency has concluded there is adequate scientific basis for its criteria. The 40 °F. temperature has long been considered by microbiologists to be the lower border of the growth range for enteric pathogens. Although psychrotrophic (cold-tolerant) bacteria grow fairly well at this temperature, they generally are organisms which cause spoilage of the perishable commodity and are not pathogenic. *L. monocytogenes*, however, also will grow slowly at 40 °F., and therefore, it is necessary to include a time requirement. The 72-hour requirement is recognized by other USDA agencies, such as FNS and the Agricultural Marketing Service, and by some industry leaders as a period of time for the storage of raw meat which allows for weekends, transportation, and holding for use without allowing excessive time for the slow-growing pathogens to reproduce. Therefore, the 72 hour/40 °F. raw material handling criteria were included in the proposal. The proposed requirement has been changed somewhat from that proposed in December to provide more latitude to the establishment without an adverse effect on safety; the provision as now proposed would require raw material to be either heat-processed or placed in a freezer within 72-hours after the raw material has been designated by the establishment for use in heat-processed patties. The option of placing the raw material into the freezer is added.

12. A few commenters were concerned that the 72 hour/40 °F. raw material handling criteria would preclude the use of trimmings brought into the establishment on the Friday before a 3-day holiday weekend.

The Agency acknowledges that this is a limit on operational activities. Nonetheless, to reduce the potential for the growth of pathogenic microorganisms, the establishment must schedule meat arrival times around holidays to assure that fresh meat is not held in the establishment for an excessive period of time. If an unanticipatable delay occurs, such as a mechanical breakdown, the establishment could maintain raw material wholesomeness by placing the product in a freezer.

13. A commenter suggested the absence of any leeway to the 40 °F. requirement is too tight; no scientific data supports the need for taking samples for microbiological analysis to determine the safety of the raw material if the temperature is only slightly above 40 °F. (41 °F. or 42 °F.).

The Agency agrees microbiological analysis on the raw material is not necessary in this instance. At 40 °F., a slight variance (1 °F. to 2 °F.) from the requirement is not likely to cause significant growth in pathogens. However, process deviations represent a loss in control of the preparation of the meat food product process, which ultimately presents a potential hazard to the consumer. Therefore, any process deviation must be corrected immediately and steps must be taken to prevent recurrence of the deviation. It should be noted, however, that any violation of the heat-processing temperature/time combination would indicate that there is an increased risk of a public health hazard sufficient to trigger the need for some remedial action on both the product and process. Such remedial action may include reprocessing the product, using the product in another product which is fully cooked, or relabeling the product as a partially-cooked product. Also, the establishment would have to correct the deviation, investigate and identify the cause and document the steps taken to assure that the deviation will not recur.

14. A commenter stated the microbiological quality of the raw materials could be adversely affected by the handling conditions of the supplier and that the December proposal does not account for supplier-abused raw ingredients; and, similarly, exempting carcass beef from the 40 °F. requirement could also cause the microbial profile to be drastically changed.

It is true that the December proposed rule would have not controlled the handling conditions of the supplier any better than the requirements of the existing system. Because of the nature of USDA's meat inspection program, the Agency's December proposal and this proposed rule necessarily focuses on in-plant processing activities which will result in immediate, marked improvement in the final product.

However, this jurisdictional focus does not preclude the taking of various actions to minimize the possible receipt and use of supplier-abused or otherwise unwholesome raw product. First, it should be noted that the Agency routinely inspects product entering into an establishment, in part to detect the effects of adverse handling. This Agency inspection activity could be supplemented by the establishment's use of a total HACCP-based program that includes buyer-enforced specifications or similar actions to control the microbiological profile of the raw material. Once raw product is in the inspected establishment, however, the provisions of the proposed rule would be applied to reduce the potential for pathogens to grow and survive in the final product, regardless of how and why the raw material's microbiological profile came to be.

The Agency agrees that exempting all carcass meat from the temperature requirement would be detrimental to the microbiological safety of the raw material. This proposed rule now clarifies that not all carcass meat is exempted. Only meat (not just beef) that is hot-boned (boned prior to the onset of rigor mortis and chilling) would be exempted. Thus, this meat either would have to be heat-processed immediately or placed in refrigerated storage. Since hot-boning can be economical and, with good sanitation practices, result in raw meat material that has a relatively low microbial load, the Agency does not want to discourage use of this process.

15. A couple of commenters stated the microbiological levels could change significantly in the raw material. Thus, the Agency should concentrate on reduction or elimination of microbiological contaminants at the source, in lieu of imposing temperature and time combination cooking requirements on the patty processor.

The Agency may consider the practicality of such programs at a future time. However, this is beyond the scope of this proposed rule. Specific regulatory action on meat patties is needed now. This proposed rule would require the establishment to rely, in part, on a HACCP-based system in producing heat-processed, uncured meat patties. Consequently, all points critical to the safe manufacture of patties would be controlled, from the raw material as it is offered for further processing, continuing with the heat-step, the cooling, and on through packaging. Although the establishment would have to adhere at least to the Agency prescribed procedure, it would be able to add additional (auxiliary) control points to the program at its discretion.

16. A commenter suggested the raw material temperature handling requirements should be in terms of product temperature, not room temperature as stated in the December proposal.

The Agency believed it must use both. Internal temperature of product is determined at the time raw materials are received for use in the production of heat-processed patties. But in all other instances, properly maintained chamber temperature will be effective in maintaining the microbiological integrity of the raw materials. Chamber temperature is easier to determine than internal product temperature and it can be changed quicker. This proposed rule clarifies the temperature required.

Heat-Processing Temperature and Time Requirements

For fully-cooked patties, the temperature/time combinations of the December proposal represented those necessary to achieve at least a 7–D thermal destruction (lethality) value, based upon the Goodfellow and Brown study.

The effectiveness of a heat treatment (lethality) is measured by determining the length of time that is necessary at a specified temperature to kill 90 percent of the organisms present. The time, generally termed the D value or decimal reduction time, can be experimentally calculated for a specific organism. Thus, a 1–D destruction is destruction of 90 percent of the organisms present, 2–D would be 99 percent destruction, 3–D would be 99.9 percent, 5–D would be 99.999 percent, and 7–D would be 99.99999 percent. The temperature/time table in the December proposal had permitted temperatures ranging from 130 °F. to 160 °F.; at times ranging from 121 minutes to instantaneous, respectively. Thus, for example, an establishment which heat-processed patties to an internal temperature of 138 °F. would be required to maintain that temperature for a minimum of 19 minutes, whereas one which heat-processed to 148 °F. would be required to maintain it for 2 minutes.

17. An overriding majority of the commenters opposed requiring an internal, instantaneous heat-processing temperature of 160 °F. for fully-cooked patties. Most commenters stated that this increase in temperature, from the current industry practice, which according to commenters approximates 145 °F., would cause significant changes in the yield, color, taste, texture, and cost of heat-processed patties.

In preparing the December proposal, the Agency did consider the potential changes in heat-processed product characteristics and cost. The Agency stated that the higher temperature/time combination requirements did not seem prohibitive, since some establishments are now using the proposed temperature/time criteria for all heat-processed, uncured poultry products and, as stated by one commenter, for uncured pork sausage patties. In any event, the Agency's primary responsibility is to protect the public health from unwholesome, adulterated meat food products; the quality characteristics or market appeal of a product is primarily the establishment's responsibility. As stated earlier, the Agency-contracted studies for *E. coli*, *L. monocytogenes* and *Salmonella* supported more rigorous temperature/time combinations to assure the wholesomeness of heat-processed patties than the reported current industry practice of attaining an internal patty temperature of approximately 145 °F. (for an unspecified period of time). The Agency maintains this position. However, in this proposal, as discussed in the following comment, the lethality of the process has been eased. For example, an establishment using an internal temperature of 151 °F. would be required to have a dwell time of 1 minute under the December proposal, or 0.68 minute under this proposed rule.

18. Several commenters suggested a 7–D lethality process is too stringent considering the expected numbers of *E. coli* and *Salmonella* (as stated in the preamble to the December proposal) in the raw material; a 4–D lethality process, they said, was sufficient for safety in fully-cooked patties.

The Agency has concluded a 7–D lethality is more stringent than is necessary to protect public health, but that a 4–D lethality is insufficient. This proposed rule, therefore, establishes a minimum 5–D lethality process for *Salmonella* as the standard for fully-cooked patties.

The three relevant issues that appear to affect the level of heat lethality required for safety are: The sensitivity of the organisms to heat, the anticipated microbial loads, and the level of organisms in the finished product that constitutes an infective dose (the number of organisms necessary to cause human illness).

The sensitivity of *E. coli* 0157:H7, *Salmonella*, and *L. monocytogenes* to heat (the D-value as previously explained) were established by the Goodfellow and Brown and the recent ABC studies.

The Agency found that data relating to the occurrence and enumeration of *E. coli, Salmonella,* and *L. monocytogenes* in raw ground meat were sparse. Quantitative data for *E. coli* 0157:H7 are limited to the few outbreaks where the meat has been shown to be the vehicle which contained the organisms and meat samples could be collected. Data are only available for two Canadian outbreaks ranging from 10 to 6200 organisms per gram.[11]

Isolation data are also limited. In Canada in 1987, five of 17 ground beef samples and one of 14 pork samples were positive for *E. coli* 0157:H7.[12] That same study reported an occurrence of *E. coli* 0157:H7 in one of 147 ground beef samples, three of 250 pork samples, four of 257 poultry samples, and four of 200 lamb samples collected in retail stores in the United States. The Agency's Microbiological Monitoring Program so far has not isolated *E. coli* 0157:H7 in ground beef, but has isolated it in a low percentage (less than 1 percent) of veal samples.[13]

The Agency's data for non-0157:H7 *E. coli* collected from raw ground beef (from the previously cited Microbiological Monitoring Program) indicated an average of 1000 per gram and a maximum level of 400,000 per gram. For *Salmonella,* the data are incomplete. A recent AMI submission reported as high as 0.46 *Salmonella* per gram of raw ground beef.[14] In the same AMI submission, numbers for *L. monocytogenes* were reported to be less than 100 per gram of raw ground beef as limited by the sensitivity of the method. This is consistent with other reported data from establishments using good manufacturing practices during slaughter, dressing, and further handling.

[11] Todd, E.D., R.A. Szabo, P. Peterkin, et al. 1988. Rapid hydrophobic grid membrane filter-enzyme-labeled antibody procedure for identification and enumeration of *Escherichia coli* 0157:H7 in foods. Appl. Environ. Microbiol. October:2536–2540. A copy of this publication is available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[12] Doyle, M.P., and J.L. Schoeni. 1987. Isolation of *Escherichia coli* 0157:H7 from retail fresh meats and poultry. Appl. Environ. Microbiol. October:2394–2396. A copy of this publication is available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[13] A copy of this report is available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[14] A copy of this report is available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Also from the Agency's Microbiological Monitoring Program, the incidence of *Salmonella* in 4388 25-gram samples of raw beef was 1.8 percent. Previous Agency surveys have shown 12 percent of pork and 35.2 percent of chicken to be positive for *Salmonella.*[15] [16] From the Agency's Microbiological Monitoring Program, *L. monocytogenes* has been found in 6.7 percent of beef samples analyzed.

Information on the infective dose of *E. coli. E. coli* 0157:H7, *L. monocytogenes,* or *Salmonella* is sparse. To be safe, the presence of any of these organisms in a fully-cooked product is unacceptable.

As further discussed under "Development of This Proposed Rule" below, the Agency has selected a 5–D lethality process for *Salmonella* as sufficient for wholesomeness.

19. A commenter stated that the temperature/time combination criteria proposed would not allow medium rare and rare patties to be manufactured—only well done ones.

Both the December proposal and this proposed rule allow partially-cooked patties as well as char-marked patties. The partially-cooked patty process requires a minimum internal temperature of only 140 °F.; the char-marked process has no minimum temperature requirement. Partially-cooked patties could be medium rare or rare; char-marked patties are essentially uncooked. However, to ensure purchasers are not misled into treating them like fully-cooked products, the Agency proposed and continues to propose that a cooking instruction be on the label of such products. The proposed cooking instruction in this proposed rule specifies that for safety these partially cooked and char-marked patties should be cooked until well done.

20. Several commenters suggested there is no reliable procedure for accurately measuring the temperature/time combination criteria for heat-processed patties.

The Agency disagrees. Several types of thermometers and thermocouples of sufficient reliability are commercially available to the industry for determining the internal temperature after the patties have been removed from the heating medium. The present temperature measuring devices and measurement of the temperature/time combination after the patty has been heat-processed, are accurate.

Despite the availability of such devices, the Agency has found discrepancies in the procedures some establishments use for measuring the internal temperature of a heat-processed meat patty. For example, some establishments stack heat-processed patties on top of each other, then insert the temperature probe down through the patties. This can result in an unrepresentative internal temperature for a single patty. It combines the surface temperature and internal temperature in one observation. In addition, pressing the heat-processed patty flat tends to force the temperature of the surface into the internal portion of the patty, giving an unrepresentative or erroneous reading of the actual heat process. This proposed rule has been clarified to provide acceptable temperature measurement procedures.

21. A commenter suggested alternative heat-processing temperature/time criteria should be allowed when the raw material ingredient microbiological quality is strictly controlled. This comment is related to comment 15 above.

The Agency agrees that a HACCP-based program might benefit by including such a provision. Although this proposed rule would not permit this or any other procedure to serve as an alternative to the prescribed procedure, the Agency is aware that there may be other procedures that might be shown to be at least as effective. For this reason, the ANPR elsewhere in this issue of the **Federal Register** solicits comments on the applicability of a concept similar to the processing authority-approved processing "schedules" (procedures) of the canning regulations for meat products (9 CFR 318.300 through 318.311).

The commenter, however, is asking for something more. The commenter suggests that lowering the pathogen level on the raw material might justify lowering the severity of the heat-process. This suggestion cannot be accommodated. At present, there are no practical procedures for assuring reduced levels of pathogens on the raw meat or other raw ingredients.

22. A commenter was concerned that the temperature/time combination criteria of the proposed regulation did not take into consideration the temperature of the raw material, especially if frozen.

Regardless of the temperature of the raw material before heat-processing, the finished product must achieve the specified temperature/time combination

[15] A copy of this survey is available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[16] A copy of this survey is available upon request in the Office of the FSIS Hearing Clerk, room 3171–South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

requirements; compliance is determined after heat-processing, not before.

However, controlling raw material temperature prior to heat-processing is important in determining the amount of heat-processing needed. Neither the December proposal nor this proposed rule restrict use of auxiliary control points by the establishment to further control the process. These auxiliary control points (points in a process that are not critical in themselves, but at which change or control can increase the probability that a heat-processed patty process is in control at a critical control point) can be added to the processing procedure, including raw meat temperature (initial temperature).

23. A commenter supported the heat-processing temperature/time criteria for pork patties (fresh, uncured pork sausage) but was concerned that the criteria were too stringent for beef patties since the microbiological profiles of pork and beef are different and because consumers accept heat-processed beef which is not well done.

The Agency disagrees that the criteria are too stringent for beef patties but not for pork. Both beef and pork are susceptible to contamination by the same pathogenic bacteria. The microorganisms of concern (*E. coli* and *Salmonella* in the December proposal; *E. coli*, *L. monocytogenes*, and *Salmonella* in this proposed rule) are killed at the same temperature in beef as in pork. The temperature/time combination criteria were designed to destroy these organisms in all meat patties.

24. A couple of commenters suggested that USDA use the catalase test to determine if the heat-process was sufficient.

While the catalase test could be used at the discretion of the establishment as an indicator of gross underprocessing, it alone cannot assure product safety. The catalase test is not useful above 142 °F. because catalase activity cannot be detected above that temperature. In earlier referenced surveys for *L. monocytogenes*, 15 of 65 samples were found positive for catalase. More importantly, 4 samples negative for catalase were found positive for *L. monocytogenes*. Clearly, a negative catalase test does not assure that all pathogenic organisms have been destroyed.

25. A commenter suggested establishments should be allowed to conduct inoculated pack studies (the addition of known quantities and types of organisms to the product; processing the product; and determining the level of survival) to determine a safe heat-process, rather than adhere to the proposed temperature/time criteria.

The Goodfellow and Brown study cited in the December proposal and in this proposed rule was performed as an inoculated pack study; however, the Agency agrees that a different HACCP-based program could be substantiated by such research. Both proposals account only for the process lethality to microorganisms at one specified temperature/time combination as measured at the completion of heat-processing. The Agency is compelled to proceed with rulemaking on the basis of the information it now has. However, as discussed in the ANPR elsewhere in this issue of the **Federal Register**, the Agency is willing to consider additional rulemaking to accommodate any such other procedures. Although effective alternative procedures may be possible, the Agency would require that convincing data be submitted to substantiate the effectiveness of alternative procedures.

Non-Refrigerated Temperature Exposure Requirements

26. A commenter asked whether equipment had to be cleaned as a result of equipment failure lasting more than 2 hours if the processing room was 40 °F.

If processing rooms were maintained at this temperature it would certainly control microbial growth and the 2-hour requirement would not be needed. However, the Agency is not aware of any processing rooms that are maintained at 40 °F. or below. Because of the heat generated during heat-processing and the need for employee comfort, the ambient air temperatures in processing rooms normally are maintained at a temperature of 50 °F. or higher. Therefore, the Agency believes the comment to be based on a hypothetical statement and will continue to impose this requirement in this proposed rule.

27. A commenter asked what holding temperature was proposed for product awaiting microbiological analysis.

This was not clearly stated in the December proposal. Routine microbiological analysis is not required as part of this proposed rule. However, product to be held for microbiological analysis should be held under normal product storage temperature—not above 40 °F. This proposed rule clarifies that heat-processed patties must be stored at a chamber temperature of 40 °F. or below.

Cooling Requirements

28. A couple of commenters suggested the cooling criterion for fully-cooked patties was too lenient and was neither typical of the industry cooling practice nor consistent with FDA policies for cooling heated products. Specifically, it was asserted that the proposed Food Protection Unicode of the FDA specifies cooling of potentially hazardous food from 130 °F. to 40 °F. within four hours (section 2-501.61).[17]

The requirement of the December proposal was consistent with other cooling guidelines issued by the Agency.[18] The Agency agrees that more rapid cooling after completion of heat-processing is good manufacturing practice and has tightened that requirement in this proposed rule. In the December proposal, fully-cooked patties were to have been cooled from 130 °F. to 80 °F. within 1.5 hours and then from 80 °F. to 40 °F. within 1.5 hours. The Agency is now proposing the fully-cooked patties be cooled to 40 °F. within 2 hours after heat-processing. The Agency believes that common industry practice for cooling these type of products is consistent with this new tightened proposed cooling requirement.

Cooking Instruction Label Requirement

29. A couple of commenters suggested that the labeling requirement, "Partially-Cooked: For Safety, Cook Until Well Done (Internal Meat Temperature 160 °F.)," would be unprecedented and inflammatory.

The Agency agrees that the labeling statement is new, but it is not unprecedented. Perishable, packaged products requiring special handling to maintain their condition are presently required to have handling statements displayed on the principal display panels of the labels (9 CFR 317.2(k)). Statements presently used include, "Keep Refrigerated," "Perishable, Keep Under Refrigeration," and "Previously Handled Frozen for Your Protection, Refreeze or Keep Refrigerated." As a handling statement, the proposed labeling requirement further informs the consumer of the nature of this perishable product.

The Agency does not agree that the statement is inflammatory. The labeling for partially-cooked or char-marked patties gives accurate information to the consumer for the safe cooking of the heat-processed product. Partially-cooked or char-marked patties are not

[16] A copy of this survey is available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[17] Food Protection Unicode, Proposed, page 13, 1988, U.S. Department of Health and Human Services. A copy of this page from the publication is available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

heat-processed sufficiently in the establishment to assure the complete destruction of pathogenic bacteria which may be present in the raw material. Only the adequacy of the final cooking step protects the consumer against any surviving pathogens. In addition, the partially-cooked patties represent a new product category with which the consumer is unfamiliar. The Agency would, however, clarify the labeling statement to make it more informative to the consumer by including a parenthetical description of what a well done product looks like, i.e., "the juices run clear."

30. A couple of commenters suggested that partially-cooked or char-marked patties represented different safety risks than fully-cooked patties and should not have been included as part of the December proposal, if allowed at all.

The Agency agrees that the safety risks are different. However, these products are in the class of products that receive a heat treatment; they do present a potential safety risk to the consumer; they can be controlled by use of a HACCP-based system to reduce the potential for health risk; and the cautionary labeling of these products will provide important consumer information. Disallowing partially-cooked or char-marked patties would have removed from the marketplace established products that are safe and wholesome if properly prepared.

31. A commenter suggested the partially-cooked patty label should be modified to indicate the product contains raw meat or that the meat is undercooked.

Partially-cooked meat is not raw. The Agency considered the term "undercooked" but, since further cooking is clearly intended and needed to assure that surviving pathogens are destroyed, it would not convey as clear a description as the term "partially-cooked."

32. A commenter suggested the cooking instruction label should be multilingual, including the French and Spanish languages.

It should be noted that the Agency does allow languages in addition to English on approved labels where there is sufficient room. As a matter of interest, for small containers of product distributed solely in Puerto Rico, Spanish may be substituted for English for all printed matter except the USDA inspection legend (9 CFR 317.2(b)).

33. A commenter suggested the cooking instruction for partially-cooked or char-marked patties should be modified to indicate the patties should be cooked until the center of each patty is no longer pink.

The Agency considered this point; however, the raw meat patty formulation may affect the rate of change of the meat mixture color. In addition, because of other factors, the color of the meat patty mixture may appear grey after a nominal heat-process, yet remain partially-cooked. Thus, in the December proposal, the Agency included an internal meat temperature along with the labeling qualifying statement. In this proposed rule, however, the Agency has changed the specific cooking instruction to "cook until juices run clear" which should be more easily understood by the consumer. This statement has been commonly used in the past as a reference for proper cooking of pork and poultry in consumer information material prepared by the Agency (including the recent publication: "Talking About Turkey: How To Buy, Store, Thaw, Stuff, and Prepare Your Holiday Bird") and by others.[19]

34. Several commenters suggested the cooking instruction was a warning to the consumer that the product is hazardous, and that consumers would not purchase the product. Therefore, this segment of the patty industry would be hurt economically.

The partially-cooked or char-marked patties may be hazardous to the public health if not sufficiently further cooked. Presently, no product is labeled "partially-cooked." This proposed rule would permit establishments to continue marketing a product which, if subsequently cooked, is also safe. The Agency has no reason to believe that the cooking instructions are likely to frighten consumers into not purchasing such products. Even if there were some information to the effect that sales were negatively impacted, consumer safety must be weighed much more heavily in the Agency's decisionmaking.

35. A commenter suggested the proposed cooking instruction was not necessary; the instruction was overkill.

The Agency disagrees. The cooking instruction is needed to more fully provide for consumer protection.

36. A couple of commenters suggested the proposed cooking instruction temperature requirement (internal temperature of 160 °F.) contradicted the FDA code for reheating heat-processed product (FDA's 165 °F. temperature specification cited earlier in this document).

The Agency is aware of the FDA policy on this point. Since temperature measurement is difficult, other prescriptive language for the consumer has been provided by the Agency in this proposed rule: "For Safety, Cook Until Well Done (Until Juices Run Clear)." This new language also eliminates the temperature difference between the two Agencies.

Sanitary Handling Practices

37. A commenter asked what constituted a "sealed, water-tight container" and if the requirement for it was applicable to frozen patties or patties stored at frozen storage warehouses.

The referenced provision was intended to assure that all heat-processed patties be stored in a container or package that will prevent microbial contamination of the finished product. This policy is appropriate for frozen storage warehouses as well as for patty processing establishments. The Agency has modified the requirement in this proposed rule to permit a range of protective storage practices. The proposed rule now simply requires that product be "packaged or tightly covered to prevent microbial contamination."

Microbiological Analysis Requirements

38. Several commenters suggested the zero tolerance for coliforms was not reasonable.

The Agency agrees. Coliform organisms are a large group of bacteria which include *E. coli*. Coliform organisms are common in the environment and their presence is not necessarily indicative of a potentially hazardous product. In any case, microbiological sampling has been removed from this proposed rule. The Agency continues, however, to support the concept of microbiological sampling, as a validation of the thermal process and verification of its proper operation. This issue is included in the ANPR published elsewhere in this issue of the **Federal Register**.

39. A couple of commenters suggested the zero tolerance for *E. coli* was not reasonable.

The Agency disagrees. *E. coli* are not common in the environment; they are enteric organisms. Their presence is indicative of a potentially hazardous product.

The National Research Council's Subcommittee on Microbiological Criteria in An Evaluation of the Role of Microbiological Criteria for Foods and Food Ingredients stated *E. coli* was

[19] U.S. Department of Agriculture Home and Garden Bulletin Number 243. Page 11. 1987. A copy of this publication is available upon request in the Office of the FSIS Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

easily destroyed by heat processing.[20] It also suggested that analysis for *E. coli* is useful to determine if contamination with enteric organisms has occurred, and enteric pathogens have survived the process and are presenting a health hazard. This issue also is addressed in the ANPR published elsewhere in this issue of the Federal Register.

40. A commenter asked what types of laboratories would be doing the microbiological analyses—USDA–FSIS laboratories, certified laboratories, or private laboratories.

Microbiological sampling has been removed from this proposed rule. This issue also is included in the ANPR published elsewhere in this issue of the Federal Register.

41. A commenter suggested microbiological analysis should only be performed on fully-cooked patties, not on partially-cooked or char-marked patties.

The Agency agrees. Food-borne pathogens, if present, may survive the less-than-fully-cooked heat-process. Partially-cooked or char-marked products are not ready-to-eat, since further heating is required by the consumer. The heat process is insufficient to destroy the pathogenic organisms in partially-cooked or char-marked products. Therefore, pathogenic organisms may be present in these products.

42. A commenter suggested microbiological analysis not be required.

In this proposed rule, microbiological analysis is not required.

Microbiological analysis should be conducted by establishments as an independent check on the effectiveness of the processing procedure and on its control. The Agency continues to support the concept of using microbiological sampling as a means to validate the thermal process and verify its proper operation. This issue is included in the ANPR published elsewhere in this issue of the Federal Register.

43. A commenter asked if the product sampled for coliform and *E. coli* analyses could be composited or had to be analyzed as individual samples.

The December proposal called for analysis of both coliforms and *E. coli* from the same sample (5 grams from each of 5 finished meat patties, each sample analyzed separately, not composited). This proposed rule does not require microbiological sampling.

44. A commenter asked which organisms were considered pathogens, and at what levels.

The Agency agrees that this point was not clear in the December proposal. *E. coli* O157:H7, *L. monocytogenes*, and *Salmonella* are considered pathogens. Although most strains of *E. coli* are not pathogens, their presence in a fully-cooked, ready-to-eat product is indicative of improper processing and/or product abuse (insufficient heat-processing, cross-contamination of fully-cooked product with raw product, slow cooling of heated product, or holding product at non-refrigerated temperatures) and, consequently, an increased likelihood that pathogenic organisms also are present. Therefore, the presence of any of these organisms, using the most current FSIS testing procedures, in such product would be unacceptable.[21]

Requirements for Handling Monitoring Defects, Process Deviations and Process Failures

45. A commenter asked under what conditions would the Agency require a partially-cooked or char-marked patty to be fully-cooked.

The December proposal would have required partially-cooked or char-marked patties to be fully-cooked when a process deviation occurred. This proposed rule makes clear that this requirement applies only if the deviation is a violation of heat-processing temperature/time requirements. A process deviation during heat-processing indicates the process lacks adequate control and the product poses a potential hazard.

46. A commenter asked what parameters would be used by the FSIS program employee to determine, in the case of a monitoring defect during a fully-cooked patty process, if specific conditions constituted adulteration and, therefore, required sampling.

Under the terms of the December proposal, FSIS program employees would have had to use their expertise and general knowledge concerning patty operations to determine if testing was necessary. This proposed rule provides FSIS program employees with criteria with which they can determine if the applicable requirements in this proposed rule have been complied with.

Scope of the December Proposal

47. A commenter suggested the December proposal did not adequately define the products which would be affected.

Neither the December proposal nor this proposed rule lists by name every product that may be subject to the regulation. Products subject to this regulation would be identifiable by their common attributes. They are: Heat-processed (heated by broiling, baking, roasting, frying, boiling, etc.); comminuted (reduced in size from large pieces of meat to small pieces of meat, including but not limited to flaking, chopping, or grinding but not including chunking or sectioning); uncured (do not contain curing agents—sodium or potassium, nitrate or nitrite); and are patty-shaped (prepared or formed as a patty in an individual serving portion). Such patty products may be breaded and battered and may contain poultry, spices, flavoring, binders, and extenders. Specific items would include hamburgers, chicken fried beef steaks, Salisbury steaks, pork sausage patties, beef patties, breaded and battered chopped veal steaks, and chopped and formed lamb patties. The term "patties" would not include products such as fritters, nuggets, Jamaican style patties (meat enclosed in a crust), and meatballs in this proposal. FSIS believes that these other products can be proposed at a later date because unlike patties, the Agency has not had any reported illnesses in which these other products have been implicated as cause for illness. The issue of mandating processing controls for other products is discussed in the ANPR published elsewhere in this issue of the Federal Register.

48. A commenter suggested the December proposal was an unsatisfactory, piece-meal approach to the need to regulate all heat-processed products (not just patties).

It may be possible to develop a rationale for a broader and more comprehensive approach to assuring all heat-processed products, especially those ready-to-eat, are safe and properly labeled. However, the Agency has data demonstrating that a problem now exists in heat-processed patties, and the Agency is acting accordingly. The issue of extending the regulation to cover other products is discussed in the ANPR published elsewhere in this issue of the Federal Register.

[20] An Evaluation of the Role of Microbiological Criteria for Foods and Food Ingredients, Subcommittee on Microbiological Criteria, Committee on Food Protection, Food and Nutrition Board, National Research Council, National Academy Press, Washington, DC 1985. Pages 121 and 122. A copy of these pages from the publication are available upon request in the Office of the Hearing Clerk, room 3171–South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[21] Copies of the FSIS methods of analysis for *E. coli*, *E. coli* O157:H7, *L. monocytogenes*, and *Salmonella* are available upon request in the Office of the Hearing Clerk, room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Development of This Proposed Rule

Because of the many comments received concerning the scope as well as the specifics of the December proposal, the Agency was (and still is) considering further rulemaking to expand on what is being proposed and address a number of new issues that need to be addressed, as discussed in the ANPR published elsewhere in this issue of the Federal Register. However, subsequent to publication of the December proposal, the Agency's public health concerns were exacerbated by further discoveries of microbiologically contaminated "ready-to-eat," heat-processed product. As discussed, in one incident *L. monocytogenes* found in a poultry product (turkey frankfurter) was actually shown to have caused human listeriosis. Further, the Agency's surveys demonstrated that *L. monocytogenes* survives some heat processing procedures. Based on these findings and current knowledge of the food-borne pathogens of concern, the Agency has concluded that there currently is a widespread potential for underprocessing of heat-processed meat and poultry food products, and that this presents a potential public health hazard which the Agency must address now. FSIS cannot further delay consideration of the issuance of a final regulation of meat patty products in hopes of devising a more comprehensive regulatory approach to foodborne microbiological hazards.

Therefore, this document is relatively narrow in scope. Like the December proposal, it would govern the processing of heat-processed patties only. It solicits comments on the changes the Agency has made to the December proposal before consideration of the implementation of a final rule. Concerns with related processes and products are to be addressed in another prospective rulemaking discussed in the ANPR elsewhere in this issue of the Federal Register.

This proposed rule has been modified from the December proposal based on the comments and other information discussed in this document. Additional definitions have been added, the heat-processing temperature/time requirements have been relaxed slightly, the cooling temperature/time requirements have been tightened, and microbiological sampling because of monitoring defects or process deviations has been removed. The range of heat-processing temperature/time combinations has been narrowed as more has been learned of the dwell times in actual use. Minor wording and format changes have been made for clarity. A discussion of the changes to the December proposal follows. Paragraph designations refer to those of this proposed rule.

Changes to the December Proposal

The title of § 318.22 (9 CFR 318.22) has been modified to better reflect the processes and products regulated under that section. The term "heat-processing" is more accurate as a description of the procedures to be regulated than the term "processing" alone. Similarly, the terminology for the class of products affected by this proposed rule has been changed from "cooked" patties to "heat-processed" patties; the new terminology better describes the heating of partially-cooked and char-marked patties which receive less than a full cook. Also, within the proposed regulation, repeated references to the product as "uncured" and "meat" have been removed since the title to the section specifies these product attributes.

(a) *Definitions.* Within paragraph (a), new definitions have been added for the terms "comminuted" and "heat-processed." "Comminuted" is a processing term describing the reduction in size of pieces of meat, including flaking, chopping, grinding, or mincing, but not including chunking or sectioning. "Heat-processed" is treatment by a heat source, including, but not limited to, frying, broiling, baking, or roasting, which results in a fully-cooked, partially-cooked, or char-marked product. These two terms clarify and more fully describe the products affected by this proposed rule.

In general, the affected products include any comminuted, uncured, patty-shaped (or formed) meat product which is heat-processed, provided the product is prepared for an individual serving (e.g., breaded and battered patties and Salisbury steak). Thus, this proposed rule would not affect products such as nuggets, meatballs, and fritters which are small pieces of comminuted product, but which require a number of such pieces to constitute a serving. In addition, this proposed rule would not apply to Jamaican style meat patties which are a turnover product (meat enclosed in a crust made of folded dough), nor to large comminuted items such as loaves.

The definition in the December proposal of the term "process failure" is not included in this proposed rule. The term was described as a finding of one of the subject organisms (coliforms, *E. coli* or *Salmonella*) in a fully-cooked patty. Because microbiological sampling is not a part of the control mechanism of this proposed rule, the term is not needed.

Some of the definitions have been clarified. The term and definition for "critical control point" were made plural and the word "best" was added to emphasize the influence of the critical control point. Within the term "monitoring activity," the phrase "collection and recording" was inserted to clarify the actions of the establishment personnel. The term and definition for "process control limits" were made singular. Within the term "process deviation," the phrase "produced in violation of the prescribed processing procedure and poses a potential" was inserted. The word "exposed" was removed. These changes clarify the intent of the term. For "patty," the parenthetical, "(chopped or ground)," is removed since it appears in the new definition for "comminuted." Within the term "production lot," the phrase "that has been designated in the processing procedure as the chosen lot size by the establishment" has been deleted since this proposed rule does not require a written processing procedure.

(b) *Processing Procedure for Heat-Processed Patties.* For clarity, the format of paragraph (b) has been rearranged. The critical control points (CCP's) of the December proposal are now critical control "areas," each of which has one or more CCP's. Each CCP is identified by its own paragraph. For example, the critical control area "(b)(1) Raw Material Handling" has three CCP's, "the internal temperature of raw meat received for use in heat-processed patties," "raw meat refrigerated storage temperature," and "raw meat refrigerated storage time" ((b)(1)(i), (b)(1)(ii), and (b)(1)(iii), respectively). In addition, the process control limits (PCL's) for each CCP are designated. Thus, for CCP (b)(1)(ii), "raw meat refrigerated storage temperature," the PCL is "the room temperature of 40 °F." Finally, the monitoring activities (MA's) remain as separate paragraphs, one for each "area." For example, in the area, "raw material handling," (b)(1), the MA's are left to the discretion of the establishment except for one specified parameter.

(b)(1) Raw Material Handling. To fit the new format, some phrases from the December proposal required minor rearranging and clarification.

In (b)(1)(i), the phrase "designated for use in heat-processed patties" has been substituted for "entering the establishment" because some raw material may be produced by the establishment and already be preset in the establishment. The establishment would have to identify which raw

materials are to be used in the production of heat-processed patties. Once designated, the provisions of this proposed rule would apply. Because the comments indicate some confusion on that point, the temperature exemption for carcasses or carcass parts which are immediately processed after boning has been clarified. It applies only to just slaughtered animals which are immediately deboned (hot-boned) and heat-processed or placed in refrigerated storage.

In (b)(1)(ii), for clarity, the PCL for raw meat refrigerated storage temperature has been changed to state that it is the chamber temperature that shall be 40 °F. or below prior to heat-processing.

In (b)(1)(iii), for clarity, "unfrozen raw meat" has been substituted for "raw meat which has never been frozen" since the latter phrase would preclude the use of an acceptable raw material and would be hard to enforce. The Agency is now proposing that raw meat either be heat-processed or placed in a freezer within 72-hours; this alternative to heat-processing would safely provide some leeway in the processing procedure for raw material handling. Hot-boned raw meat either would be heat-processed or placed in refrigerated storage.

(b)(2) Non-Refrigerated Temperature Exposure. The order of appearance of this critical control area would be placed ahead of (b)(3) Heat-Processing, since this is a more logical flow of the processing operation.

In (b)(2)(ii), for clarity, the PCL for returning raw meat to storage would be changed to within 1 hour "from the occurrence."

In (b)(2)(iii), the "within 1 second" accuracy requirement of the time recording device has been deleted because it would be essentially meaningless within the context of the freezing requirements. Time recording devices manufactured for this purpose are accurate within 1 second.

In (b)(3)(i), Table A, the PCL's for the temperature/time combination for fully-cooked patties have been significantly modified. This proposed rule contains a different set of temperature/time combinations than those proposed in December. Based upon the new information referenced earlier regarding safe heat-processing temperatures for ground meat from the International Commission on Microbiological Specifications for Foods, an internal temperature of 151 °F. to 157 °F. (and above) has been used. The Agency believes that temperature/time combinations for temperatures below 151 °F. are not appropriate for the patty industry. Although temperature/time combinations below 151 °F. may be safe (as supported by the Goodfellow and Brown and the ABC studies), the range specified assures appropriate temperatures considering the industry dwell times in common use and current good manufacturing practices. Consequently, the Agency removed from the proposed rule other temperature/time combinations as unnecessarily complicating its monitoring program.

Heat-processing time (dwell time) is now reported to the nearest hundredth of a minute, as well as to the nearest whole second.

The instantaneous dwell time has been removed. A minimum dwell time of 10 seconds now would be required. Thus, temperatures of 157 °F. and above would have a dwell time of 10 seconds. The Agency believes that, for safety, these thin patty products must have an associated dwell time before being rapidly chilled or frozen. A minimum dwell time of 10 seconds was determined by the Agency to be both practical and realistic for patty operations.

Based upon both the comments and what the Agency believes should be required to obtain a safe heat-process, the proposed required process lethality has been changed from a 7–D to a 5–D lethality process for *Salmonella.*

In (b)(3)(ii), the requirement that the internal temperature of the partially-cooked patty be measured through the side of the patty and not through the top has been relocated to (b)(3)(iv) and clarified to indicate that the Agency's concern is possible misreadings caused by use of improper techniques, not that there are no devices capable of accurately measuring through the top of the patty.

In (b)(3)(iii), the PCL for the internal temperature of char-marked patties has been clarified to state the internal temperature may be raised but not above 70 °F. The wording in the December proposal, "shall raise the internal temperature at the center of each raw patty to a maximum internal temperature of 70 °F.," was confusing and implied the temperature had to be raised to 70 °F. Further, a note is included to clarify that this section only applies when a heat source is used to place char-markings on the patty surface. Some "char-marked" patties are formed by placing caramel stripes to simulate heat-source char-markings; neither the December proposal nor this proposed rule would apply to such processing procedures. This issue is addressed in the ANPR published elsewhere in this issue of the **Federal Register.**

In (b)(3)(iv), the monitoring activity has been amended to specify sampling procedures to be used by the establishment. It now states that the internal temperature of a patty has to be measured in an individual patty only, without compressing the patty. Due to the relatively thin nature of patties, stacking them or compressing them would cause the measurement to more closely reflect the temperature of the surface rather than a true internal temperature. During production, numerous heat-processed patties may be produced in a relatively short period of time. Therefore, the requirement has been reworded to assure that the establishment would monitor at least one heat-processed patty from each production line during each hour of production. These new monitoring requirements establish a minimum frequency and sample size necessary to assure adequate process control.

In (b)(4)(i), the cooling requirement for fully-cooked patties has been modified. Based upon the comments, the cooling temperature/time combination requirements have been tightened and are similar to the cooling requirements for partially-cooked and char-marked patties. The new time requirements more closely reflect good manufacturing practices. Cooling of the fully-cooked patties would now be to an internal temperature of 40 °F. or less within 2 hours after heat-processing.

In (b)(4)(iii), as in (b)(2)(iii), the "within 1 second" accuracy requirement of the time recording device for cooling has been deleted.

(b)(5) Cooking Instruction Label Requirement. Based upon the comments, the Agency has concluded it needs to modify the cooking instruction it is proposing be required on labels of partially-cooked and char-marked patties. It has substituted, for the directions to cook the meat to an internal temperature of 160 °F., directions to cook it "until juices run clear," which should be more easily understood by the consumer. Also, the lettering requirement has been clarified. It is now specified that the lettering shall be at least one-half the size of the largest letter in the product name; the December proposal did not make reference to the size of the largest letter in the product name. This is more consistent with similar label requirements. In addition, the statement referencing the temporary alternative of using pressure sensitive labels to revise existing labels has been deleted. This alternative is routinely permitted by the Agency upon request. Placing it in this proposed regulation would make it

appear to be a special practice limited to this instance.

(b)(6) Sanitary Handling and Storage Practices. The requirement that partially-cooked or char-marked patties must be physically separated from raw product has been deleted because it is expected that the consumer will fully cook those patties.

In (b)(6)(i), the option to have other methods of separating product approved by the Administrator has been removed. If any other methods are developed after final publication of this rule, the Administrator will make those options available to all establishments through subsequent rulemaking.

In (b)(6)(v), the sanitary storage requirement for packaging in a sealed, water-tight container has been clarified. The wording has been changed to read "prior to storage with other product, fully-cooked patties shall first be packaged, or tightly covered to prevent microbial contamination."

In (b)(6)(vi), a provision specifically governing refrigerated storage of heat-processed (fully-cooked, partially-cooked, or char-marked) patties has been added for clarity. All heat-processed patties now would have to be stored at a chamber temperature of 40 °F. or below. This proposed rule does not provide for microbiological analysis (as did the December proposal) of product after a monitoring defect or process deviation. This is covered further in the discussion of paragraphs (c)(1) and (c)(2) below.

(c)(1) Monitoring defects. The wording has been clarified. The requirement for microbiological testing has been removed.

(c)(2) Process deviations. The wording has been clarified. The requirement for microbiological testing has been removed. Processes which violate a PCL for temperature or time related to heat-processing will be handled as follows: The affected product will be (1) Reprocessed under one of the fully-cooked temperature/time combinations specified in paragraph (b)(3)(i); or (2) included as an ingredient in another product processed under one of the temperature/time combinations in paragraph (b)(3)(i), provided this does not violate the final product's standard of composition, upset the order of predominance of ingredients, or perceptibly affect the normal product characteristics; or (3) relabeled as a partially-cooked patty product, if it fully meets the requirements in paragraph (b) of this section; or (4) destroyed and handled as condemned product as prescribed in part 314 of this subchapter.

In (b)(7) of § 320.1 (9 CFR 320.1), the records required to be kept have been changed. In this proposed rule, records would be required only under paragraph 318.22(c); the requirements for records of microbiological sampling have been removed.

For the reasons discussed in the preamble, it is proposed that 9 CFR parts 318 and 320 of the Federal meat inspection regulations be amended as follows:

List of Subjects

9 CFR Part 318

Meat Inspection, Preparation of Products, Quality Control.

9 CFR Part 320

Records.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 451–470, 601–695; 33 U.S.C. 1254; 7 CFR 2.17, 2.55.

2. Part 318 would be amended, and the table of contents would be amended accordingly, by adding a new § 318.23 which reads as follows:

§ 318.23 Heat-processing procedures, cooking instructions, and cooling, handling, and storage requirements for uncured meat patties.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Comminuted.* A processing term describing the reduction in size of pieces of meat, including chopping, flaking, grinding, or mincing, but not including chunking or sectioning.

(2) *Critical control points (CCP's).* The points where a process or procedure can best be changed or controlled to assure that heat-processed patties are wholesome and not adulterated.

(3) *Hazard.* Any contaminant, adulterant, factor, or microbial condition that results in an adulterated product or which may cause the product to be a health risk to the consumer.

(4) *Heat-processed.* Treatment by a heat source, including, but not limited to, frying, broiling, baking, or roasting, which results in a fully-cooked, partially-cooked, or char-marked product.

(5) *Monitoring activity (MA).* The systematic collection and recording by establishment personnel of an observation at a critical control point with a predetermined frequency to ascertain if the process is under control by comparing the observation to the process control limit.

(6) *Monitoring defect.* An incorrectly performed or omitted monitoring activity by the establishment.

(7) *Patty.* A shaped and formed, comminuted meat food product for individual servings.

(8) *Process control limit (PCL).* A limit at a critical control point used to control the process and assure that wholesome and unadulterated product is produced.

(9) *Process deviation.* A deviation from a process control limit, indicating that the production lot has been produced in violation of the prescribed processing procedure and poses a potential hazard.

(10) *Production lot.* A separable, identifiable amount of sequentially-produced, heat-processed patties not to exceed 1 day's production.

(b) *Processing Procedures for Heat-Processed Patties.* Establishments which process fully-cooked, partially-cooked, or char-marked patties shall use the following CCP's, PCL's, and MA's.

(1) *Raw Material Handling.* (i) CCP—The internal temperature of raw meat designated for use in heat-processed patties. PCL—The raw meat shall have an internal temperature of 40 °F. or below; however, if raw meat is directly derived from just-slaughtered animals (hot-boned carcasses which have been boned prior to the onset of rigor mortis and chilling) and is immediately heat-processed or placed in refrigerated storage, this temperature requirement shall not apply.

(ii) CCP—Raw meat refrigerated storage temperature. PCL—The chamber temperature shall be 40 °F. or below.

(iii) CCP—Raw meat refrigerated storage time. PCL—Refrigerated, unfrozen raw meat which the establishment has designated for use in patties, shall either be heat-processed or placed in a freezer within 72 hours. PCL—Frozen raw meat, if thawed, shall be heat-processed within 24 hours after completion of thawing.

(iv) MA—The establishment shall develop the method and the frequency for assuring compliance with temperature and time requirements. The temperature measuring device shall be accurate within 1 °F.

(2) *Non-Refrigerated Temperature Exposure.* (i) CCP—Raw meat storage time at a room temperature above 40 °F. PCL—Raw meat or a formula containing raw meat for use in a fully-cooked patty product shall not be held above 40 °F. for more than 2 hours before heat-processing. PCL—Raw meat or a formula containing raw meat for use in a partially-cooked or char-marked patty product shall not be held above 40 °F.

for more than 1 hour before heat-processing.

(ii) CCP—An equipment failure or a stop in production. PCL—Raw meat or a formula containing raw meat shall be returned to 40 °F. storage within 1 hour of the occurrence. PCL—The equipment shall be cleaned and sanitized in accordance with (b)(6)(ii) of this section before production resumes if an equipment failure or a stop in production persists for more than 2 hours.

(iii) MA—The establishment shall develop the method and the frequency for assuring compliance with temperature and time requirements. The temperature measuring device shall be accurate within 1 °F.

(3) *Heat-Processing.* (i) CCP—Fully-cooked patty heat-processing procedure. PCL—A minimum processing temperature/time combination shall be selected from Table A of this paragraph:

TABLE A.—PERMITTED HEAT-PROCESSING TEMPERATURE/TIME COMBINATIONS

Minimum internal temperature		Minimum processing time after minimum temperature is reached (dwell time)	
Degrees		Time	
Fahrenheit	or Centigrade	(Minutes)	or (Seconds)
151	66.1	0.68	41
152	66.7	.54	32
153	67.2	.43	26
154	67.8	.34	20
155	68.3	.27	16
156	68.9	.22	13
157 (and up).	69.4 (and up).	0.17	10

(ii) CCP—Partially-cooked patty heat-processing procedure. PCL's—The internal temperature at the center of each patty shall be raised to a minimum internal temperature of 140 °F. and then cooled to a maximum internal temperature of 40 °F. within 2 hours.

(iii) CCP—Char-marked patty heat-processing procedure. PCL—The internal temperature at the center of each patty may be raised, but shall not be raised above 70 °F when the char-marks are applied to the patty. PCL—The char-marked patty shall be cooled to a maximum internal temperature of 40 °F. PCL—The process of char-marking the patty and cooling the patty to the maximum internal temperature of 40 °F. shall be completed in 2 hours or less.

Note: This section only applies to char-marked patties when a heat source is used to place char-markings on the patty surface.

(iv) MA—The establishment shall develop the method and the frequency for assuring compliance with temperature and time requirements. The internal temperature shall be measured in an individual, unstacked patty without compressing the surface. The establishment shall measure the temperature of at least one heat-processed patty from each production line each hour of production to assure control of the heat-process. The temperature measuring device shall be accurate within 1 °F.; the time recording device shall be accurate within 1 second.

(4) *Cooling.* (i) CCP—Fully-cooked patties. PCL's—Patties shall be cooled to an internal temperature of 40 °F. or below within 2 hours after heat-processing.

(ii) CCP—Partially-cooked or char-marked patties. PCL's—Cooling PCL's are combined with those for heat-processing and are contained in paragraph (b)(3) of this section.

(iii) MA—The establishment shall develop the method and the frequency for assuring compliance with temperature and time requirements. The temperature measuring device shall be accurate within 1 °F.

(5) *Cooking Instruction Label Requirement.* (i) CCP—Partially-cooked patties. Product shall bear the labeling statement "Partially-Cooked: For Safety, Cook Until Well Done (Until Juices Run Clear)." PCL—The labeling statement shall be adjacent to the product name, in lettering of easily readable style, and at least one-half the size of the largest letter in the product name.

(ii) CCP—Char-marked patties. Product shall bear the labeling statement "Uncooked, Char-Marked: For Safety, Cook Until Well Done (Until Juices Run Clear)." PCL—The labeling statement shall be adjacent to the product name, in lettering of easily readable style, and at least one-half the size of the largest letter in the product name.

(iii) MA—The establishment shall assure application of appropriate product labels.

(6) *Sanitary Handling and Storage Practices.* (i) CCP—Product separation—Physically separate areas where unpackaged, fully-cooked patties are handled from areas where other products are handled. Such separation shall be accomplished by:

(A) PCL—Using solid, impervious floor-to-ceiling walls, or

(B) PCL—Handling exposed, fully-cooked patties and other product at different times, and cleaning the entire area after handling other product is completed before handling unpackaged, fully-cooked patties.

(ii) CCP—Equipment cleaning and sanitizing—Clean and sanitize any work surface, machine, or tool which contacts product before it contacts unpackaged, fully-cooked patties. PCL—The sanitizer shall be germicidally equivalent to 50 ppm chlorine.

(iii) CCP—Employee sanitary behavior—Assure that all employees wash their hands with soap and water and sanitize their hands whenever they enter the fully-cooked patty area or before handling unpackaged, fully-cooked patties. PCL—The washing and sanitizing shall be as frequent as necessary during operations to avoid contamination of fully-cooked patties. PCL—The sanitizer shall be germicidally equivalent to 50 ppm chlorine.

(iv) CCP—Employee garments—Assure that all employees wear outer garments, including aprons, smocks, and gloves especially identified as restricted for use in the fully-cooked patty area only. PCL—Require at least a daily change of garments. PCL—Require hanging of these garments in a designated location before the employee leaves the area.

(v) CCP—Sanitary storage of fully-cooked patties—Assure that fully-cooked patties stored in the same room as other product are not exposed to cross-contamination. PCL—Prior to storage with other product, fully-cooked patties shall first be packaged, or tightly covered to prevent microbial contamination.

(vi) CCP—Refrigerated storage of heat-processed patties. PCL—Assure that fully-cooked, partially-cooked, or char-marked patties are stored at a chamber temperature of 40 °F. or below.

(vii) MA—Establishment management personnel shall conduct unscheduled inspections to assure that the sanitary handling and storage practices are enforced.

(c) *Requirements for Handling Monitoring Defects and Process Deviations*—(1) *Monitoring defects.* If for any reason a monitoring defect has occurred, the establishment shall: Investigate and identify the cause; take steps to assure that the defect will not recur; and place on file in the establishment, available to any duly authorized representative of the Secretary, a report of the investigation, the cause of the defect, and the steps taken to prevent recurrence.

(2) *Process deviations.* (i) If any process deviation has occurred, the establishment shall: Take immediate steps to correct the deviation or stop the process; investigate and identify the cause; take steps to assure that the deviation will not recur; and place on file in the establishment, available to

any duly authorized representative of the Secretary, a report of the investigation, the cause of the deviation, and the steps taken to prevent recurrence.

(ii) In addition, if a process deviation violates a PCL for temperature or time related to heat-processing, the establishment shall:

(A) Reprocess the affected product, either by a method in paragraph (b)(3)(i) in this section or by using the affected product as an ingredient in another product processed to one of the temperature and time combinations in paragraph (b)(3)(i) in this section, provided this does not violate the final product's standard of composition, upset the order of predominance of ingredients, or perceptibly affect the normal product characteristics, or

(B) Relabel the affected product as a partially-cooked patty product, if it fully meets the partially-cooked requirements in paragraph (b) of this section.

(Approved by the Office of Management and Budget under Control Number 0583-0056)

PART 320—RECORDS, REGISTRATION, AND REPORTS

3. The authority citation for part 320 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 930, as amended, 81 Stat. 584, 84 Stat. 91, 438 (21 U.S.C. 71 et seq., 601 et seq.).

4. Part 320 would be amended by adding § 320.1(b)(7) which would read as follows:

§ 320.1 Records required to be kept.

* * * * *

(b) * * *

(7) Records as required in § 318.22 (b) and (c).

* * * * *

Done at Washington, DC, on May 30, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 90-12854 Filed 6-4-90; 8:45 am]

BILLING CODE 3410-DM-M

federal register

Tuesday
June 5, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121 et al.
Special Federal Aviation Regulation No. 38; Certification and Operating Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 127, 129, and 135

[Docket No. 18510; SFAR No. 38-6]

Special Federal Aviation Regulation No. 38; Certification and Operating Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment establishes a new termination date for Special Federal Aviation Regulation (SFAR) No. 38-2 (50 FR 23941; June 7, 1985), which contains the certification and operating requirements for persons conducting commercial passenger or cargo operations. The FAA stated in previous extensions of SFAR 38-2 that it was necessary to establish a new termination date for SFAR 38-2 to allow time for the FAA to complete the rulemaking process that will consolidate the certification and operating requirements rules and incorporate SFAR 38-2 into the Federal Aviation Regulations (FAR). The current termination date for SFAR 38-2 is June 1, 1990. Because the FAA has not completed that rulemaking process, it is necessary to extend the current termination date 1 year. SFAR 38-2 is extended to ensure that the FAA has adequate time to complete the consolidation of the certification and operating requirements rules; however, if the new consolidation is issued as a final rule before the new termination date, the FAA intends to publish a notice rescinding SFAR 38-2 concurrently with the publication of the final rule in the Federal Register.

DATES: *Effective date:* June 5, 1990. *Comments* must be received on or before August 6, 1990.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 18518, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Coffey, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-3750.

SUPPLEMENTAL INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 (43 FR 58366; December 14, 1978) as a consequence of the Airline Deregulation Act of 1978 (ADA or Act (Pub. L. 95-504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979-1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire." (SFAR 38 did not address part 133 External Load Operations, part 137 Agriculture Aircraft Operations, or part 91 training and other special purpose operations.)

On December 27, 1984, the FAA issued SFAR 38-1 (50 FR 450; January 4, 1985), which merely extended the termination date of the regulation and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38-2 (50 FR 23491; June 7, 1985), which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (i.e., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38-3, which extended the termination date of SFAR 38-2 to allow the FAA time to incorporate its contents into Notice No. 88-16. That notice proposes to consolidate the certification and operating requirements rules in parts 121 and 135, and to incorporate various provisions of SFAR 38-2 into new part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38-4, which reinstated SFAR 38-2, because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38-2 into Notice No. 88-16.

On May 26, 1989, the FAA issued SFAR 38-5, which extended the expiration date of SFAR 38-2 to June 1, 1990, in order for the FAA to consider comments on Notice No. 88-16 and to issue a final rule which would consolidate the certification and operating requirements rules of SFAR 38-2, parts 121 and 135.

Good Cause Justification for Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38-2 of June 1, 1991. If the FAA publishes a final rule incorporating SFAR 38-2 into the FAR before the termination date, a notice rescinding SFAR 28-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the

provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

List of Subjects

14 CFR Part 121

Air carrier, Aircraft, Airmen, Air transportation, Aviation safety.

14 CFR Part 125

Aircraft, Airmen, Airports, Airspace, Air traffic control, Air transportation, Chemicals, Children, Drugs, Flammable materials, Handicapped, Hazardous materials, Infants, Smoking.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness.

14 CFR Part 129

Air carriers, Aircraft, Airmen, Air transportation, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Air taxis, Air transportation, Airworthiness, Aviation safety, Safety.

Adoption of the Amendment

In consideration of the foregoing SFAR 38-2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

PART 125—[AMENDED]

2. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 through 1430, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

PART 127—[AMENDED]

3. The authority citation for part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

PART 129—[AMENDED]

4. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, 1511, and 1522; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 1983).

PART 135—[AMENDED]

5. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

SFAR No. 38-2 [Amended]

Special Federal Aviation Regulation No. 38-2 is amended by removing the words "June 1, 1990" in the last paragraph, and by adding in their place the words "June 1, 1991."

Issued in Washington, DC, on May 30, 1990.

James B. Busey,

Administrator.

[FR Doc. 90-12934 Filed 5-31-90; 11:20 am]

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Federal Register

Tuesday
June 5, 1990

Part V

Environmental Protection Agency

Twenty-sixth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41033; FRL 3765-4]

Twenty-Sixth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Twenty-sixth Report to the Administrator of EPA on May 8, 1990. This report, which revises and updates the Committee's priority list of chemicals, adds one chemical and three chemical groups to the list. One chemical and one chemical group are recommended with intent-to-designate. The Twenty-sixth Report is included with this notice.

The ITC has removed one chemical and one chemical group from the priority list. Crotonaldehyde (CAS No. 4170-30-3) was removed from the priority list because the EPA published a consent order on November 9, 1989 (54 FR 47062). Disperse blue dyes were removed from the priority list because the EPA published a consent order on November 21,1989 (54 FR 48102), that requires testing of CAS No. 3618-72-2.

EPA invites interested persons to submit written comments on the report, and to attend Focus Meetings to help narrow and focus the issues raised by the ITC's intent to designate recommendations. Additionally, EPA is soliciting interest in public participation in the consent agreement process for sodium cyanide and isocyanates.

DATES: Written comments should be submitted by July 5, 1990.Written notice of interest in being designated an "interested party" to the development of consent agreements for sodium cyanide or isocyanates should be submitted by July 5, 1990. The procedures for negotiations are described in 40 CFR 790.22. All written submissions should bear the identifying docker number (OPTS-41033; FRL 3765-4).

A Focus Meeting will be held on June 20, 1990.

ADDRESSES: Send written submissions to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE G-004, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPTS-41033; FRL 3765-4).

The public record supporting this action, including comments, is available for public inspection in Rm. NE G-004 at the address noted above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Focus Meeting will be held at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. Persons planning to attend the Focus Meeting, and/or seeking to be informed of subsequent public meetings on these chemicals, should notify the Environmental Assistance Division at the address listed below. To ensure seating accommodations at the Focus Meetings, persons interested in attending are asked to notify EPA at least one week ahead of the scheduled date.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. E-543B, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's Report to the Administrator.

I. Background

TSCA (Pub. L 94-469, 90 Stat. 2003 et seq; 15 U.S.C. 260l et seq.) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risks that such chemical substances and mixtures may present to health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee to make recommendations to the Administrator of EPA on chemical substances and mixtures to be given priority consideration in proposing test rules under section 4(a). Section 4(e) directs the ITC to revise its list of recommendations at least every 6 months as necessary. The ITC may "designate" up to 50 substances and mixtures at any one time for priority consideration by the Agency. The ITC's Twenty-sixth Report was received by the Administrator on May 8, 1990, and follows this Notice. The Report adds one chemical and three groups of chemicals to the TSCA section 4(e) priority list.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals.

A notice will be published later in the **Federal Register** adding the substances recommended in the ITC's Twenty-sixth Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716), which requires the reporting of unpublished health and safety studies on the listed chemicals. The delay in publishing this notice is necessitated because of the requirement to complete the economic analysis on three groups of chemicals. That notice will also add chemicals to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR part 712). The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

Focus Meetings will be held to discuss relevant issues pertaining to the intent to designate chemicals and to narrow the range of issues/effects which will be the focus of the Agency's subsequent activities in responding to the ITC recommendations. The Focus Meetings will be held on June 20, 1990, as follows:

10:00-11:30 a.m.: Sodium Cyanide.
1:00-2:30 p.m.: Isocyanates.

They will be held at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. These meetings are intended to supplement and expand upon written comments submitted in response to this notice.

Persons wishing to attend these meetings, or subsequent meetings on these chemicals, should call Michael Stahl, Environmental Assistance Division, at the telephone number listed above at least one week in advance.

This notice also serves to invite persons interested in participating in or monitoring negotiations for a consent agreement for sodium cyanide or isocyanates to notify EPA no later than [insert date 30 days after date of publication in the **Federal Register**]. The procedures for negotiations are described in 40 CFR 790.22. All written submissions should bear the identifying docket number (OPTS-41033; FRL 3765-4).

III. Status of List

In addition to adding one chemical and three chemical group recommendations to the priority list, the ITC's Twenty-sixth Report notes the removal of crotonaldehyde and disperse blue dyes from the list.

Authority: 15 U.S.C. 2603.

Dated: May 30, 1990.

Charles M. Auer,

Acting Director, Existing Chemical Assessment Division.

Twenty-Sixth Report of the Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94-469) provides for the testing of chemicals in commerce that may present an unreasonable risk of injury to health or the environment, that may reasonably be anticipated to enter the environment in substantial quantities or that may involve significant or substantial human exposure. It also provides for the establishment of a Committee (the Interagency Testing Committee), composed of representatives from eight designated Federal agencies, to recommend chemical substances and mixtures (chemicals) to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority testing consideration.

Section 4(e)(1)(A) of TSCA directs the Committee to recommend to the EPA Administrator chemicals to which the Administrator should give priority testing consideration pursuant to section 4(a). The Committee is required to designate those chemicals, from among its recommendations, to which the Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. At least every 6 months, the Committee makes those revisions in the TSCA section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of one chemical and three chemical groups.

The Priority List is divided into three parts: Part A contains those recommended chemicals and groups designated for priority consideration and response by the EPA Administrator within 12 months. Part B contains chemicals and groups recommended with intent-to-designate. This category was established by the Committee in its seventeenth report (50 FR 47603; November 19, 1985) to take advantage of rules promulgating automatic reporting requirements for non-designated ITC recommendations under the section 8(a) Preliminary Assessment Information Rule and the TSCA section 8(d) Health and Safety Data Reporting Rule. Information received following recommendation with intent-to-designate may influence the Committee to either designate or not designate the chemicals or groups in a subsequent report to the Administrator. Part C contains chemicals and groups that have been recommended for priority consideration by EPA without being designated for response within 12 months. The changes to the Priority List are presented, together with the types of testing recommended in the following Table 1. The notes following Table 1 acknowledge the Committee's efforts to comprehensively examine ongoing testing-related activities and available information previously submitted under TSCA.

TABLE 1—ADDITIONS TO THE SECTION 4(E) PRIORITY LIST MAY 1990

Chemical/group	Recommended studies
A. Designated:	
None.	
B. Recommended with Intent-to-Designate:	
Sodium cyanide (CAS No. 143-33-9)	Chemical Fate: None. Health Effects: Under review, as cyanide. Ecological Effects: Toxicity to migratory birds.
Isocyanates	Chemical Fate: Physical/chemical properties and persistence. Health Effects: Under review. Ecological Effects: None.
C. Recommended:	
Brominated flame retardants	Chemical Fate: Physical/chemical properties and persistence. Health Effects: Under review. Ecological Effects: None.
Alkyl phosphates	Chemical Fate: Physical/chemical properties and persistence. Health Effects: None. Ecological Effects: None, except tri-*n*-butyl phosphate.

The individual chemicals for the chemical groups in Table 1 are listed below to identify SARA section 110 and EPCRA section 313 chemicals and to minimize ambiguities related to TSCA sections 8(a) and 8(d) reporting requirements. Chemical nos. 1 through 43 are isocyanates, chemical nos. 44 through 59 are brominated flame retardants, and chemical nos. 60 through 79 are alkyl phosphates.

Chemical name	CAS No.	Notes
1. 2,6-Toluene diisocyanate	91-08-7	b,d,e,f
2. 4,4'-Diisocyanato-3,3'-dimethylbiphenyl	91-97-4	e,f
3. *p*-Nitrophenyl isocyanate	100-28-7	
4. 4,4'-Diphenylmethane diisocyanate	101-68-8	b,e,f
5. 3,4-Dichlorophenyl isocyanate	102-36-3	
6. Phenyl isocyanate	103-71-9	c
7. *p*-Chlorophenyl isocyanate	104-12-1	
8. *p*-Phenylene diisocyanate	104-49-4	e,f
9. Ethyl isocyanate	109-90-0	
10. *n*-Propyl isocyanate	110-78-1	
11. *n*-Butyl isocyanate	111-36-4	
12. Octadecyl isocyanate	112-96-9	

Chemical name	CAS No.	Notes
13. 1,3-Diisocyanatobenzene	123-61-5	e,f
14. (α,α,α-Trifluoro-*m*-tolyl)-isocyanate	329-01-1	
15. 2,4-Toluene diisocyanate	584-84-9	b,d,e,f
16. 1-Isocyanato-2-methylbenzene	614-68-6	
17. 1-Isocyanato-4-methylbenzene	622-58-2	
18. Methyl isocyanate	624-83-9	b
19. 3-Isocyanato-1-propene	1476-23-9	
20. 1,1',1''-Methylidynetris(4-isocyanato-benzene)	2422-91-5	
21. 1-Bromo-4-isocyanatobenzene	2493-02-9	
22. 1-Chloro-3-isocyanatobenzene	2909-38-8	
23. Ethyl isocyanatoacetate	2949-22-6	
24. Cyclohexyl isocyanate	3173-53-3	
25. Tris(isocyanatohexyl)biuret	4035-89-6	
26. Isophorone diisocyanate	4098-71-9	e,f
27. Tris(4-isocyanatophenyl) thiophosphate	4151-51-3	
28. 1,1'-Methylenebis(4-isocyanato-cyclohexane)	5124-30-1	e,f
29. 1-Isocyanato-2-((4-isocyanato-phenyl)methyl)benzene	5873-54-1	e,f
30. Diphenylmethylene diisocyanate	10031-75-1	
31. 1,6-Diisocyanato-2,4,4-trimethylhexane	15646-96-5	e,f
32. 1,6-Diisocyanato-2,2,4-trimethylhexane	16938-22-0	e,f
33. Bis(isocyanatomethyl)benzene	25854-16-4	
34. 1,1'-Methylenebis(isocyanatobenzene)	26447-40-5	e
35. Toluene diisocyanate	26471-62-5	a,b,d,e,f
36. 1,3,5-Tris(3-isocyanatomethylphenyl)-1,3,5-triazine-2,4,6(1*H*,3*H*,5*H*)-trione	26603-40-7	
37. Toluene diisocyanate dimer	26747-90-0	
38. 2,6-Diisopropylphenyl isocyanate	28178-42-9	
39. 2-Isocyanato-1,3-dimethylbenzene	28556-81-2	
40. 2-Isocyanatoethyl methacrylate	30674-80-7	
41. 3,5-Dichlorophenyl isocyanate	34893-92-0	
42. 2-Heptyl-3,4-bis(9-isocyanatononyl)-1-pentylcyclohexane	68239-06-5	
43. Isophorone diisocyanate, hydroxyethyl methacrylate adduct	73597-26-9	
44. Bromochloromethane	74-97-5	a,e
45. 3,4',5-Tribromosalicylanilide	87-10-5	
46. 2,3,4,5,6-Pentabromotoluene	87-83-2	
47. 1,2,3,4,5-Pentabromo-6-chlorocyclohexane	87-84-3	
48. 2,3-Dibromopropanol	96-13-9	
49. Vinyl bromide	593-60-2	c
50. 2,4-Dibromophenol	615-58-7	
51. Ethoxylated tetrabromobisphenol A	4162-45-2	
52. Tetrabromobisphenol A, bis(allyl ether)	25327-89-3	
53. Tetrabromodichlorocyclohexane	30554-72-4	
54. Tribromotrichlorocyclohexane	30554-73-5	
55. Tribromoneopentyl alcohol	36483-57-5	
56. Tetrabromobisphenol A diacrylate	55205-38-7	
57. Alkanes, C_{16-18}, bromochloro	68955-41-9	
58. 2,4-(or 2,6)-Dibromophenol, homopolymer	69882-11-7	
59. Benzene, ethenyl-, homopolymer, brominated	88497-56-7	
60. Triethyl phosphate	78-40-0	f
61. Tris(2-ethylhexyl) phosphate	78-42-2	f
62. Tris(2-butoxyethyl) phosphate	78-51-3	f
63. Di-*n*-butyl phosphate	107-66-4	
64. Triisobutyl phosphate	126-71-6	f
65. Tri-*n*-butyl phosphate[1]	126-73-8	c,e,f
66. Di(2-ethylhexyl) phosphate	298-07-7	
67. Monomethyl phosphate	812-00-0	
68. Mono(2-ethylhexyl) phosphate	1070-03-7	
69. Ethyl dichlorophosphate	1498-51-7	
70. *n*-butyl phosphate	1623-15-0	
71. Mono(isopropyl) phosphate	1623-24-1	
72. Monooctadecyl phosphate	2958-09-0	
73. Monohexyl phosphate	3900-04-7	
74. Monooctyl phosphate	3991-73-9	
75. Di-*n*-dodecyl phosphate	7057-92-3	
76. 2-(2-Butoxyethoxy)ethanol phosphate (3:1)	7332-46-9	f
77. 2-Ethylhexyl phosphate	12645-31-7	
78. Dodecyl phosphate	12751-23-4	
79. Diisooctyl phosphate	27215-10-7	

[1]Recommended in 18th Report, but plant toxicity testing needed.

Notes:

a. Superfund Amendments and Reauthorization Act (SARA) section 110.

b. Emergency Planning and Community Right-to-Know Act (EPCRA) section 313.

c. Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR).

d. TSCA section 8(a) Comprehensive Assessment Information Rule (CAIR).

e. TSCA section 8(d) Health and Safety Data Reporting Rule.

f. TSCA section 8(c) notices requiring manufacturers, importers, processors and distributors to submit records and reports of allegations that chemical substances or mixtures caused significant adverse reaction to health or the environment.

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives:

Council on Environmental Quality

Nomination pending

Department of Commerce
Raimundo Prat, Alternate
Environmental Protection Agency
Letitia Tahan, Member
Vincent Nabholz, Alternate
National Cancer Institute
Thomas P. Cameron, Alternate
National Institute of Environmental Health Sciences
James K. Selkirk, Member and Chairperson
National Institute for Occupational Safety and Health
Robert W. Mason, Member (See Note 1)
Rodger L. Tatken, Alternate
National Science Foundation
Carter Kimsey, Member
Jarvis L. Moyers, Alternate
Occupational Safety and Health Administration
Loretta Schuman, Member and Vice-Chairperson
Stephen Mallinger, Alternate
Liaison Agencies and Their Representatives:
Agency for Toxic Substances and Disease Registry
Deborah Barsotti
Consumer Product Safety Commission
Lakshmi C. Mishra
Department of Agriculture
Richard M. Parry, Jr.
Elise A. B. Brown
Department of Defense
Harry Salem
Melvin E. Anderson
Department of the Interior
Clifford P. Rice
Barnett A. Rattner
Department of Transportation
James O'Steen (See Note 2)
Food and Drug Administration
Charles J. Kokoski (See Note 3)
Raju Kammula (See Note 4)
National Library of Medicine
Vera Hudson
National Toxicology Program
Ex-officio
U.S. International Trade Commission
Edward Matusik (See Note 5)
James Raftery (See Note 6)
Committee Staff:
John D. Walker, Executive Secretary
Norma Williams, ITC Program Specialist
Support Staff:
Alan Carpien — Office of the General Counsel, EPA

Notes:
(1) Appointed on April 4, 1990.
(2) Appointed on February 9, 1990.
(3) Appointed on February 1, 1990.
(4) Appointed on February 5, 1990.
(5) Appointed on March 19, 1990.
(6) Appointed on April 18, 1990.

The Committee acknowledges and is grateful for the assistance and support given the ITC by the staff of Syracuse Research Corp. (technical support contractor) and personnel of the EPA Office of Toxic Substances.

Chapter 1—Introduction

1.1 *Background.* The Interagency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L 94–469). The specific mandate of the Committee is to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority testing consideration. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List, which is to be published in the Federal Register. The Committee is directed by section 4(e)(1)(A) of TSCA to designate those chemicals on the Priority List to which the EPA Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. There is no statutory time limit for EPA response regarding chemicals that ITC has recommended with intent-to-designate or recommended.

At least every 6 months, the Committee makes those revisions in the section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

The Committee is composed of representatives from 8 statutory member agencies and 10 liaison agencies. The specific representatives and their affiliations are named in the front of this report. The Committee's chemical review procedures and priority recommendations are described in previous reports (Refs. 1 through 9).

1.2 *Committee's previous reports.* Twenty-five previous reports to the EPA Administrator have been issued by the Committee and published in the Federal Register. Seventy-eight chemicals and 21 chemical groups were recommended for priority consideration by the EPA Administrator and designated for response within 12 months. In addition, 12 chemicals and 6 chemical groups were recommended without being so designated. Overall, in the 25 reports to the EPA Administrator, the Committee has recommended testing for 90 chemicals and 26 chemical groups. The groups of designated and recommended chemicals do not total 27, because 1 group (brominated flame retardants) was split between designated and recommended parts of the priority list. A complete list of recommended chemicals may be obtained by contacting: Dr. John D. Walker, Executive Secretary, Interagency Testing Committee, U.S. Environmental Protection Agency (TS–792), 401 M St., SW., Washington, DC 20460, U.S.A., (202) 382–3820.

1.3 *Committee's activities during this reporting period.* Between October 26, 1989 and April 26, 1990, the Committee reviewed chemicals that were nominated by Member Agencies, evaluated chemicals by using the Committee's computerized, substructure-based, chemical selection processes (Ref. 11) and examined lists of ongoing activities related to reducing testing information deficiencies .

Member-Agency nominations sustains one of the Committee's major functions, viz, to serve in an advisory capacity to assist in the exchange of information, collaboration, and elimination of problems caused by jurisdictional overlap and to assist in the coordination of testing being sponsored or required by U.S. Government organizations. The chemical, 4-Vinylcyclohexene and the brominated flame retardants, that were recommended for testing in the Committee's 25th Report, were nominated by the National Institute for Occupational Safety and Health and the U.S. Environmental Protection Agency, respectively. New member-agency nominations for this report include sodium cyanide (the U.S. Department of the Interior) and isocyanates (the U.S. Environmental Protection Agency).

Alkyl phosphates were selected by using the Committee's computerized, substructure-based, chemical selection processes. The Committee continues to recommend groups of structurally- or use-related chemicals for screening tests. The Committee believes this is a cost-effective approach to satisfying chemical testing information deficiencies because it promotes a comprehensive analysis of chemicals that may produce similar effects or that may involve similar exposures.

During this reporting period, the Committee reviewed several TSCA section 8(a) and 8(c) reports containing Confidential Business Information (CBI). The Committee is requesting that EPA not add 2,4-, 2,6-, and mixed isomers of toluene diisocyanate to PAIR at this time. For these chemicals, the Committee wants Member Agencies to have an opportunity to examine information submitted in response to CAIR, especially information that might be redundant with information required by PAIR.

During this reporting period, the Committee also reviewed several For Your Information (FYI), TSCA section

8(d) and 8(e) documents that are stored on microfiche in the TSCA Public Docket Office, Office of Toxic Substances, Environmental Protection Agency, Room G–004 NE Mall, 401 M St., SW., Washington, D.C. 20460. These microfiched documents are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (1–800–336–4700), and from Chemical Information Systems, Inc., 7215 York Road, Baltimore, Maryland 21212 (1–800–CIS–USER). The Committee referenced several of these documents in Chapter 2 of this report and readers are referred to the above addresses to obtain further information. Interested parties can also obtain, from the EPA address, copies of publicly-available reports, letters and published references supporting recommendations of chemicals in this report.

The Committee continues to comprehensively search available domestic and international lists of ongoing activities related to reducing testing information deficiencies on chemicals under review. Efforts to conduct these searches identified chemicals listed in other statutes and chemicals for which TSCA information-gathering activities are ongoing (see Table 1 notes). The Committee makes the results of these searches publicly available by referencing TSCA submissions in Reports to the EPA Administrator or making tables and references of these submissions available in the public dockets supporting a Report to the EPA Administrator.

As related to ongoing international activities, the Committee compared the list of CAS Registry numbers of chemicals that it is recommending for testing with a March 9, 1990 list of CAS Registry numbers for 45 high production volume chemicals allocated for cooperative work by the Organization for Economic Cooperation and Development. There were no common CAS Registry numbers on both lists.

During this reporting period, the Committee reviewed available information on 92 chemicals and 14 chemical groups. One chemical and three chemical groups were selected for addition to the section 4(e) Priority List; one chemical and two chemical groups were deferred. Review of the remaining chemicals is continuing.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: "*** make such revisions in the [priority] list as it determines to be necessary and *** transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the List by adding one chemical, sodium cyanide (CAS No. 143–33–9) and three chemical groups, isocyanates, brominated flame retardants (BFRs), and alkyl phosphates. Crotonaldehyde (CAS No. 4170–30–3) was removed from the Priority List because the EPA published a Consent Order on November 9, 1989 (54 FR 47062). Disperse Blue Dyes were removed from the Priority List because the EPA published a Consent Order on November 21, 1989 (54 FR 46162) that required testing of CAS No. 3618–72–2; but no testing for CAS Nos. 3618–73–3, 3956–55–6 and 21429–43–6.

The Priority List (Table 2) is divided into the following three parts; namely, A. Designated Chemicals and Groups, B. Chemicals and Groups Recommended with Intent-to-Designate, and C. Recommended Chemicals and Groups. Individual chemicals in Priority List chemical groups are included in the list of chemicals following Table 1 of this Report and the body of Table 1 in previous Reports to minimize ambiguities related to TSCA section 8(a) and 8(d) reporting requirements. Table 2 reads as follows:

TABLE 2—THE TSCA SECTION 4(E) PRIORITY LIST MAY 1990

Entry	Date of designation
A. Designated Chemicals and Groups:.	
Brominated flame retardants..	November 1989
B. Chemicals and Groups Recommended with Intent-to-Designate:.	
Chloroalkyl phosphates	November 1988
4-Vinylcyclohexene	November 1989
Sodium cyanide	May 1990
Isocyanates	May 1990
C. Recommended Chemicals and Groups:.	
Imidazolium quaternary ammonium compounds.	May 1988
Ethoxylated quaternary ammonium compounds.	May 1988
Butyraldehyde	November 1988
Brominated flame retardants..	November 1989
	May 1990
Alkyl phosphates	May 1990

References

(1) Sixteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 21, 1985, 50 FR 20930–20939. Includes references to Reports 1 through 15 and an annotated list of removals.

(2) Seventeenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 19, 1985, 50 FR 47603–47612.

(3) Eighteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 19, 1986, 51 FR 18368–18375.

(4) Nineteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 14, 1986, 51 FR 41417–41432.

(5) Twentieth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 20, 1987, 52 FR 19020–19026.

(6) Twenty-first Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 20, 1987, 52 FR 44830–44837.

(7) Twenty-second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 20, 1988, 53 FR 18196–18210.

(8) Twenty-third Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 16, 1988, 53 FR 46262–46278.

(9) Twenty-fourth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, July 27, 1989, 54 FR 31248–31249.

(10) Twenty-fifth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, December 12, 1989, 54 FR 51114–51130.

(11) Walker, J.D. and Brink, R.H. "New Cost-Effective, Computerized Approaches to Selecting Chemicals for Priority Testing Consideration." Aquatic Toxicology and Environmental Fate. G.W. Suter II and M.A. Lewis, Eds. American Society for Testing and Materials, Philadelphia, PA. ASTM STP 1007. 11:507–536 (1989).

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding to the section 4(e) Priority List one chemical and three chemical groups (see Table 1). The recommendation of these chemicals is made after considering the factors identified in section 4(e)(1)(A) and other relevant information, such as the chemical testing information deficiencies of Member Agencies.

2.2 *Designated chemicals.* None.

2.3 *Chemicals recommended with intent-to-designate—2.3.a— Sodium cyanide—Summary of recommended*

studies. It is recommended that sodium cyanide be tested for:

1. *Chemical fate.* None.

2. *Health effects.* Under review, as cyanide.

3. *Ecological effects.* Toxicity to migratory birds.

Physical and Chemical Information

CAS Number: 143–33–9
Synonyms: Sodium Cyanide
Acronym: NaCN
Structural Formula: Na^+CN^-
Empirical Formula: NaCN
Molecular Weight: 49.02
Physical State at 25° C: Solid
Description of Chemical: White granules or fused pieces (Ref. 21, Windholtz et al., 1983)
Melting Point: 563° C
Vapor Pressure: $< 10^{-9}$ mm Hg (extrapolated to 25° C)
Specific Gravity: Not Applicable
Log Octanol/Water Partition Coefficient: Not Applicable
Water Solubility at 20° C: 480,000 mg/L
Log K_{oc}: Not Applicable
Henry's Constant: Not Applicable

Rationale for Recommendations

A. *Exposure information — Production/use/disposal/exposure/release.* In 1986, U.S. demand for NaCN was approximately 71 million lbs. (Ref. 6, CMR, 1987).

Sodium cyanide is used in the leaching of gold and silver from ores (Ref. 21 Windholtz et al., 1983) and mine tailings (Ref. 9 Fiksel et al., 1981), electroplating baths, and fumigating warehouses and shipping containers (e.g., ships, railcars) (Ref. 21, Windholtz et al., 1983).

B. *Evidence for exposure—Environmental exposure.* During its use to extract gold and silver from mine tailings, cyanide-containing waters are discharged to impoundments (Ref. 9, Fiksel et al., 1981). The letter from the U.S. Department of the Interior nominating sodium cyanide to the Committee contained the following information (Ref. 5, Buffington, 1990):

> The number of the mines employing this method is estimated to be in the hundreds and every indication is that the use of this method is expanding. Gold mining operations have been shown to yield CN [cyanide] concentrations of 25–300 ppm in water of mill tailings impoundments and even higher concentrations, 500–2000 ppm, occur where the leach process is used. The fresh water impoundments vary from shallow depressions of about 50 feet across to more than 100 acres and depths of 15 feet; the median pond is 3–4 acres. In the interest of recycling the CN, the operators intentionally try to maintain high levels of CN in the ponds.

Sodium cyanide is included in "cyanide compounds" that are defined in 40 CFR 372.65. These cyanide compounds are on the Toxics Release Inventory established under section 313 of the Emergency Planning and Community Right-to-Know Act (Pub. L. 99–499, "EPCRA"). Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use toxic chemicals to report annually their environmental releases of such chemicals. Mining operations, however, are not required to report discharges to impoundments under section 313 of EPCRA. Releases of "cyanide compounds" as reported under section 313 of EPCRA for the years 1987 and 1988 are summarized below:

Medium	Pounds Released	
	1987	1988
Air	1,119,119	631,926
Water	142,413	190,906
Land	14,580	134,559
Underground (Injection)	4,047,763	5,761,349
POTWs[1]	1,206,796	1,143,282

[1]Publicly Owned Treatment Works.

In addition, a number of monitoring studies of water and wastewater, including a number of studies submitted under TSCA are available (Ref. 1, Allied Chem Corp., 1985a; Ref. 2, Allied Chem Corp., 1985b; Ref. 3, Allied Signal Inc., 1989); Ref. 7, E. I. du Pont de Nemours & Co., Inc., 1989; Ref. 8, E. I. du Pont de Nemours & Co., Inc., 1989; Ref. 10, FMC Corp, 1979; Ref. 12, Monsanto Co., 1987; Ref. 13, PPG Industries, Inc., 1987a; Ref. 14, PPG Industries, Inc, 1987b; Ref. 15 , Rohm & Haas Co., 1982; Ref. 16, Rohm & Haas Co., 1986; Ref. 17, Shell Oil Co, 1989; Ref. 18, Sybron Corp, 1982; Ref. 19, Union Carbide Corp., 1988.

I. Chemical Fate Information

Chemical fate testing is not recommended at this time.

II. Health Effects Information

Health effects information on cyanide is being reviewed by the Agency for Toxic Substances and Disease Registry (ATSDR) (Ref. 4, ATSDR, 1989). Available information suggests that some health effects testing may be necessary, but before testing is recommended, the Committee wants ATSDR and other Member Agencies to have an opportunity to examine any additional information that is submitted in response to this report.

III. Ecological Effects Information

A. *Acute and subchronic (short-term) effects.* Cyanides are Priority Pollutants under the Clean Water Act. Numerous tests are available that demonstrate the acute toxicity of free cyanide to aquatic organisms. Free cyanide is present in water from the dissolution of such cyanide compounds as sodium cyanide, potassium cyanide, and hydrogen cyanide. The LC_{50} values for 9 freshwater fish species range from 52 to 350 μg/L; the most sensitive species is *Salvelinus fontinalis*. The LC_{50} values for 6 invertebrate species range from 83 to 2,490 μg/L, with the most sensitive species being *Daphnia pulex*. The LC_{50} values for 3 marine fish species (*Menidia menidia, Cyprinodon variegatus*, and *Pseudopieronectes americanus*) are 59, 300, and 372 μg/L, respectively. Amphipods are the least sensitive of the marine invertebrates tested (LC_{50} = 1,220 μg/L), and mysids and copepods the most sensitive (LC_{50} values = 30 and 113 μg/L, respectively). In addition, the 96–hour LC_{50} values for the green alga *Scenedesmus quadricauda* is 160 μg/L (Ref. 20, US EPA, 1985).

B. *Chronic (long-term) effects.* Tests with free cyanide produced chronic toxicity values of: 34 μg/L for *Asellus communis*; 18 μg/L for *Gammarus psuedolimnaeus*; 8 μg/L for *Salvelinus fontinalis*; 16 μg/L for *Pimephales promelas*; and 70 μg/L for *Mysidopsis bahia* (Ref. 20, US EPA, 1985).

C. *Other ecological effects (biological, behavioral, or ecosystem process).* The letter from the U.S. Department of the Interior nominating sodium cyanide to the Committee contained the following information (Ref. 5, Buffington 1990):

> Cyanide in water of heap leach and mill tailings ponds associated with precious metal

mining has been implicated in substantial wildlife mortality in the western U.S. during the 1980s. As a result of voluntary reporting by 47 mining operations in the State of Nevada, more than 6,000 carcasses of at least 80 species of birds, 17 species of mammals, and a variety of reptiles and amphibians have been retrieved from these impoundments. Birds, especially aquatic migrants, represented over 90 percent of the total mortalities. Although these mine ponds are not usually associated with prime wildlife habitat, they are frequently located along critical avian migration routes and provide resting sites for opportunistic migrants.

D. *Bioconcentration and food-chain transport.* No data were found.

E. *Rationale for ecological effects testing recommendation.* The U.S. Department of the Interior is concerned about the toxicity of cyanide to migratory birds that alight on ponds containing cyanide-contaminated water. Ecological effects testing is recommended because data are insufficient to reasonably determine or predict the toxicity of cyanide to migratory birds and other wildlife.

References

(1) Allied Chemical Corp. TSCA Sec. 8(d) submission 878216017, microfiche number OTS0206784. "Hydrogeologic investigation and implementation of remedial measures at Bendix Industrial Tools Green Field, Massachusetts with cover letters." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1985a).

(2) Allied Chemical Corp. TSCA Sec. 8(d) submission 878216189, microfiche number OTS0206865. "Final report preliminary site assessment Broadview, Illinois plant Amphenol Products Division industrial and sector with cover letter attached." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1985b).

(3) Allied Signal, Inc. TSCA Sec. 8(d) submission 86-890000266, microfiche number OTS0520421. "Final draft phase 1 site assessment: Body of report, figures, attachments and hydraulic properties with attached appendices and cover letter dated 05/15/89." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1989).

(4) ATSDR. Agency for Toxic Substances and Disease Registry. "Toxicological Profile for Cyanide." TP-88/12. Department of Health and Human Services, U.S. Public Health Service, Centers for Disease Control, Atlanta, GA (1989).

(5) Buffington, J.D. Letter from John D. Buffington, Regional Director for Research and Development, Fish and Wildlife Servide, U.S. Department of the Interior to John D. Walker, Acting Executive Secretary, Interagency Testing Committee (ITC), nominating NaCN for consideration by the ITC, Dated April 17, 1990.

(6) CMR. Chemical Marketing Reporter. "Chemical Profile: Hydrogen Cyanide." June 22. New York, NY: Schnell Publishing Co. (1987).

(7) E.I. du Pont de Nemours & Co., Inc. TSCA Sec. 8(d) submission 86-890000135, microfiche number OTS0517735. "Endangerment assessment, on-site conditions on seven chemicals with cover letter dated 02/24/89." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1989a).

(8) E.I. du Pont de Nemours & Co., Inc. TSCA Sec. 8(d) submission 86-890000134, microfiche number OTS0517734. "Endangerment assessment, off-site conditions on 1,1,1-trichloroethane, 1,1-dichloroethane, 1,2-dichloroethane, xylenes and 1,3-dichloropropane with cover letter dated 02/24/89." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1989b).

(9) Fiksel, J., Cooper, C., Eschenroeder, A., Goyer, M., and Perwak, J. "Exposure and risk assessment for cyanide." EPA/440/4-85/008. (NTIS PB85-220572). Cambridge, MA: Arthur D. Little, Inc. (1981).

(10) FMC Corp. TSCA Sec. 4 submission 40-7942485, microfiche number OTS0519270. "Health effect studies on various aryl phosphates." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1979).

(11) Janks, W.R. "Cyanides." In: *Kirk-Othmer Encyclopedia of Chemical Technology*. New York, NY: John Wiley & Sons (1979).

(12) Monsanto Co. TSCA Sec. 8(d) submission 86-870000940, microfiche number OTS0515378. "Acute oral, eye, skin, and inhalation toxicity, preliminary ground water assessment, and characterization of effluents of phenol with cover letter dated 07/27/87." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1987).

(13) PPG Industries, Inc. TSCA Sec. 8(d) submission 86-870002003, microfiche number OTS0517092. "Waste disposal sites assessment." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1987a).

(14) PPG Industries, Inc. TSCA Sec. 8(d) submission 86-870002033, microfiche number OTS0517122. "Preliminary investigation at the Hranica waste disposal site - Sarver, Penn." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1987b).

(15) Rohm & Haas Co. TSCA Sec. 8(d) submission 878212294, microfiche number OTS0205979. "Characterization & fate of the discharge of priority pollutants from the Rohm & Haas Philadelphia plant into Delaware low level collector of the Philadelphia sewer." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1982).

(16) Rohm & Haas Co. TSCA Sec. 8(d) submission 868600048, microfiche number OTS0510197. "Memorandum: treatment of cyanide in the Houston plant with cover letter dated 05/07/86." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1986).

(17) Shell Oil Co. TSCA Sec. 8(d) submission 86-890000228, microfiche number OTS0516763. "Analysis of waste water samples and inhalation reproduction range-finding study in mated rats with C9 aromatic hydrocarbons with cover letter dated 05/10/89." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1989).

(18) Sybron Corp. TSCA Sec. 8(d) submission 878210423, microfiche number OTS0206251. "Surface water quality and hydrogeologic investigation of abandoned settling basins." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1982).

(19) Union Carbide Corp. TSCA Sec. 8(d) submission 86-880000319, microfiche number OTS0514200. "Hydrogeological investigation at the Union Carbide Solvents and Materials Coating Plant with cover letter dated 07/06/88." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. (1988).

(20) U.S. EPA. Environmental Protection Agency. Ambient Water Quality Criteria for Cyanide. Washington, DC: Office of Water Regulation and Standards, U.S. Environmental Protection Agency. (1985).

(21) Windholtz, M., Budavari, S., Blumetti, R.F., and Otterbein, E.S., eds., The Merck Index. 10th edition. Rahway, New Jersey: Merck & Co., Inc., p. 8440 (1983).

2.3.b *Isocyanates—Summary of recommended studies.* It is recommended that the isocyanates included in the list of chemicals following Table 1 (except for those with specific testing noted in the Physical and Chemical Information section and section II of this chapter) be tested for:

1. *Chemical fate.* Physical/chemical properties and persistence.

2. *Health effects.* Under review.

3. *Ecological effects.* None.

Physical and Chemical Information

Except for vapor pressure of phenyl isocyanate (2.57 mm Hg at 25° C; Ref. 6, Daubert and Danner, 1989), 2,4-toluene diisocyanate (0.008 mm Hg at 20° C; Ref. 3, Boublick et al., 1984), *n*-butyl isocyanate (17.6 mm Hg at 25° C; Ref. 6, Daubert and Danner, 1989) and cyclohexyl isocyanate (1.02 mm Hg at 25° C; Ref. 6, Daubert and Danner, 1989), melting point of cyclohexyl isocyanate (48° C; Ref. 2, Aldrich, 1988), methyl isocyanate (-17° C; Ref. 7, Dean, 1985), *p*-chlorophenyl isocyanate (31° C; Ref. 7, Dean, 1985) and *n*-butyl isocyanate (26° C; Ref. 2, Aldrich, 1988) and boiling point of *p*-chlorophenyl isocyanate (204° C; Ref. 7, Dean, 1985), cyclohexyl isocyanate (168-170° C; Ref. 7, Dean, 1985), *n*-butyl isocyanate (115° C; Ref. 7, Dean, 1985) and methyl isocyanate (39.1° C; Ref. 16, Weast, et al., 1985), the Committee has no information on measured physical/chemical properties of the isocyanates included in the list of chemicals following Table 1.

Rationale for Recommendations

A. *Exposure information—Production/use/disposal/exposure/*

release. The Committee believes that the isocyanates included in the list of chemicals following Table 1 are commercially available and that many are produced in substantial volumes; actual volumes are CBI. Isocyanates are used in a large number of applications including polyurethanes, flexible urethane foams (for furniture, transportation, carpet underlay, bedding, and other foam uses), rigid foams, coatings, elastomers, thermoplastic elastomers, preparation of polyurethane resin and spandex fibers, bonding rubber to rayon and nylon, and in the manufacture of carbamates ureas for pharmaceuticals, herbicides, and pesticides. A search of studies submitted under TSCA revealed monitoring studies for 4,4'-diphenylmethane diisocyanate and 2,4-toluene diisocyanate (Ref. 8, Hazelton Labs, 1977; Ref. 14, Potlatch Corp., 1987).

B. *Evidence for exposure—Human exposure.* The isocyanates recommended in this report are used in a variety of applications, many of which can lead to worker exposure. This is exemplified by the case reports or industrial hygiene studies submitted to the EPA as FYI (for your information) or under TSCA sections 8(d) (health and safety studies) or 8(e) (notice of substantial risk) as well as the reports of significant adverse reactions submitted under TSCA section 8(c) as CBI. A table of isocyanates for which FYI, TSCA 8(d) or 8(e) case reports and industrial hygiene studies, and a list of references for those reports or studies are contained in the public docket for the 26th ITC Report.

Environmental exposure. The following releases are reported from the Toxics Release Inventory:

Chemical name/medium	Pounds released	
	1987	1988
2,6-Toluene diisocyanate:		
Air	424,400	131,421
Water	102,510	0
Land	1,000	510
4,4'-Diphenylmethane diisocyanate:		
Air	868,740	285,181
Water	770	1,022
Land	86,975	87,165
2,4-Toluene diisocyanate:		
Air	821,295	226,672
Water	250	0
Land	1,000	1,040
Methyl isocyanate:		
Air	286,544	10,175
Water	0	0
Land	0	64

I. Chemical Fate Information

A search of chemical fate studies submitted under TSCA revealed three biodegradation studies for 4,4'-diphenylmethane diisocyanate (Ref. 10, International Isocyanate Institute (III), 1987a.; Ref. 11, III, 1987b; Ref. 12, III, 1987c). These studies, since they were conducted in the presence of liquid water, may be biodegradation tests on isocyanate hydrolysis products. An EPA report provided reliable hydrolysis data for phenyl isocyanate and *n*-butyl isocyanate (Ref. 13, Mill et al., 1984) as did the results of Castro et al. (Ref. 5, 1985) for methyl isocyanate. Other hydrolysis data for methyl isocyanate and phenyl isocyanate appear to be less reliable because it is unknown whether buffers were used to control pH and because some experiments used a considerable amount of dioxane (Ref. 15, Tiger et al., 1971); data for toluene diisocyanate appear to be less reliable because experiments were conducted in the heterogeneous phase, temperature was not controlled, it is unknown whether buffers were used to control pH and because some experiments used dioxane-water mixtures (Ref. 1, Aleksandrova et al., 1972; Ref. 4, Brochhagen and Grieveson, 1984). The Committee acknowledges that simple isocyanates hydrolyze rapidly in the presence of liquid water. However, the Committee recognizes that in the absence of sufficient quantities of liquid water, that physical/chemical properties such as vapor pressure will influence the fate of isocyanates, especially partitioning to air. With respect to partitioning to air and in response to the Committee's recommendation of health effects testing for hexamethylene diisocyanate in the 22nd Report, the EPA proposed gas-phase hydrolysis testing to estimate the persistence of hexamethylene diisocyanate in workplace air. A previous study on gas-phase hydrolysis of toluene diisocyanate indicated that loss of toluene diisocyanate resulted from adsorption to test chamber walls, not hydrolysis (Ref. 9, Holdren et al., 1984). At this time the Committee is not recommending gas-phase hydrolysis testing of isocyanates, because it wants to review the gas-phase hydrolysis test data for hexamethylene diisocyanate. However, chemical fate testing is recommended because data were insufficient to reasonably determine or predict physical/chemical properties and persistence.

II. Health Effects Information

Health effects testing information is being reviewed by the Environmental Protection Agency (EPA), National Institute of Occupational Safety and Health (NIOSH) and Occupational Safety and Health Administration (OSHA). Member Agencies are concerned about the potential adverse health effects that may result from exposure to isocyanates. Available information suggests that some health effects testing may be necessary, but before testing is recommended, the Committee wants EPA, NIOSH, OSHA and other Member Agencies to have an opportunity to examine any additional information that is submitted in response to this Report. A table of isocyanates for which FYI, TSCA 8(d) or 8(e) health effects studies were submitted to the EPA and a list of references for those studies are contained in the public docket for the 26th ITC Report.

III. Ecological Effects Information

No ecological effects testing is recommended at this time. A table of isocyanates for which FYI, TSCA 8(d) or 8(e) ecological effects, bioconcentration and tissue concentration studies were submitted to the EPA and a list of references for those studies are contained in the public docket for the 26th ITC report. Many of these studies, since they were performed in liquid water, may be toxicity tests on isocyanate hydrolysis products.

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2.4 *Recommended chemicals—2.4.a Brominated flame retardants (BFRs)—Summary of recommended studies.* It is recommended that the BFRs included in the list of chemicals following Table 1 (except for those with specific testing noted in the Physical and Chemical Information section and section II of this chapter) be tested for:

1. *Chemical fate.* Physical/chemical properties and persistence.

2. *Health effects.* Under review.

3. *Ecological effects.* None.

Physical and Chemical Information

Except for information on physical/chemical properties of a few commercial mixtures containing the BFRs included in the list of chemicals following Table 1 and water solubility of bromochloromethane (9,000 mg/L; Ref. 9, Kirk-Othmer, 1978) and 2,4- (or 2,6-) dibromophenol, homopolymer (1.6 mg/L; Ref. 14, Velsicol, 1990a), melting point of bromochloromethane (-86.5° C; Ref. 18, Weast, 1987) and 1,2,3,4,5-pentabromo-6-cyclohexane (202° C; Ref. 4, Hutzinger et al., 1976) vapor pressure of bromochloromethane (141 mm Hg at 24° C; Ref. 10, Kudchadker et al., 1979) and ethoxylated tetrabromobisphenol A (10.1 mm Hg at 24° C; Ref. 13, U.S. Testing, 1985), octanol-water partition coefficient of bromochloromethane (25.1; Ref. 5, ISHOW, 1988) and 2,4- (or 2,6-) dibromophenol, homopolymer (143; Ref. 15, Velsicol, 1990b), the Committee has no information on measured physical/chemical properties of the BFRs included in the list of chemicals following Table 1.

Rationale for Recommendation

A. *Exposure information—Production/use/disposal/exposure/release.* The Committee believes that the BFRs included in the list of chemicals following Table 1 may be commercially available and that several are produced in substantial volumes; actual volumes are CBI. In a January 8, 1990 letter to the Brominated Flame Retardants Industry Panel, the Committee solicited voluntary submissions of production, use, exposure, and release information, as well as any unpublished health effects, chemical fate, and environmental effects data for the first 15 BFRs included in the list of chemicals following Table 1 (Ref. 6, ITC, 1990). In response to that letter, Great Lakes Chemical Corporation (GLCC) indicated that 2,3,4,5,6-pentabromotoluene and 2,3-dibromopropanol were inactive products not manufactured by GLCC, and that 2,4-dibromophenol may be manufactured by GLCC in Europe, but that it is not imported into the U.S. (Ref. 2, Great Lakes, 1990). The Committee appreciates receiving this voluntary information from GLCC. The Committee wants to review any production, importation or exposure information that may be submitted by others in response to this report, before making any subsequent decisions on these chemicals. The 16th BFR included in the list of chemicals following Table 1 was identified by the Ferro Corporation as the analytically correct chemical description of tribrominated polystryene which was recommended for testing in the Committee's 25th Report (Ref. 1, Ferro Corp., 1990). They suspected "that no person manufactures or imports tribrominated polystyrene in the United States for commercial purposes". The Committee is examining the information submitted in response to the 25th Report on tribrominated polystyrene.

The BFRs included in the list of chemicals following Table 1 (for which use data was available) may be used as flame retardants in fire extinguishers (bromochloromethane), polyester resins (2,3,4,5,6-pentabromotoluene, ethoxylated tetrabromobisphenol A), polystyrene foam (1,2,3,4,5-pentabromo-6-cyclohexane), synthetic fibers (vinyl bromide), and plastics (tetrabromobisphenol A allyl ether).

B. *Evidence for exposure—Environmental exposure.* Bromochloromethane was measured at concentrations greater than 10 ng/L in Lake Ontario, at concentrations ranging from 5–150 ng/L in Welland River water, and at 5 ng/L in Niagara Falls, Ontario chlorinated tap water (Ref. 7, Kaiser and Camba, 1983; Ref. 8, Kaiser et al., 1983). Bromochloromethane was also measured (8 μg/L) in a 10 g tissue sample of rainbow trout taken from the Colorado River (Ref. 3, Hiatt, 1983). Vinyl bromide is listed on the Toxics Release Inventory. In 1987, 53,700 pounds were released to air; in 1988, 4,950 pounds were released to air and 400 pounds were discharged to water.

I. Chemical Fate Information

Except for biodegradation data on bromochloromethane (Ref. 12, Tabak et al., 1981), a hexahalocyclohexane mixture containing 1,2,3,4,5-pentabromo-6-cyclohexane (Ref. 11, Lickly et al., 1984) and 2,4- (or 2,6-) dibromophenol, homopolymer (Ref. 16, Velsicol, 1990c), the Committee has no chemical fate information on the BFRs included in the list of chemicals following Table 1. Chemical fate testing is recommended because there are insufficient data to reasonably determine or predict physical/chemical properties and persistence.

II. Health Effects Information

Health effects testing for bromochloromethane is being reviewed by the Agency for Toxic Substances and Disease Registry (ATSDR) and the U.S. Environmental Protection Agency (EPA). Available information suggests that some health effects testing may be necessary, but before testing is recommended, the Committee wants ATSDR, EPA and other Member Agencies to have an opportunity to

examine any additional information that is submitted in response to this Report. A table of BFRs for which FYI, TSCA section 8(d) or 8(e) health effects studies were submitted to the EPA and a list of references for those studies are contained in the public docket for the 26th ITC Report.

III. Ecological Effects Information

No ecological effects testing is recommended at this time. A table of BFRs for which FYI, TSCA section 8(d) or 8(e) ecological effects studies were submitted to the EPA and a list of references for those studies are contained in the public docket for the 26th ITC Report. The Committee examined data for 2,3,4,5,6-pentabromotoluene, including the study of Zitko and Carson (Ref. 19, 1977) which demonstrated slow depuration from Atlantic salmon and the study of Walsh et al. (Ref. 17, 1987) that reported a marine algal $EC_{50} > 1$ mg/L. Available information suggests that some environmental effects testing may be necessary, but before testing is recommended, the Committee wants to examine any additional information that is submitted in response to this Report.

The Committee received permission from GLCC to send to the EPA as a FYI submission, the unpublished chemical fate, health effects, and ecological effects studies that GLCC voluntarily submitted (Ref. 2, Great Lakes, 1990). The studies were assigned FYI-OTS-0490-0756 and the EPA document number 84-900000087. Under 40 CFR 716.20(a)(2), health and safety studies submitted to EPA as FYI are exempt from both the copy and list submission requirements under 40 CFR 716.30 and 716.35; GLCC has no obligation to resubmit these studies to EPA.

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2.4.b *Alkyl phosphates—Summary of recommended studies.* It is recommended that the alkyl phosphates included in the list of chemicals following Table 1 be tested for:

1. *Chemical fate.* Physical/chemical properties and persistence.

2. *Health effects.* None.

3. *Ecological effects.* None, except tri-*n*-butyl phosphate. Tri-*n*-butyl phosphate was recommended for plant toxicity testing in the 19th report. The EPA published a final rule on August 14, 1989 (54 FR 33400), and reported that proposing the early seedling growth test to determine the toxicity of tri-*n*-butyl phosphate to plants was being considered. The Committee is only rerecommending plant toxicity testing for tri-*n*-butyl phosphate.

Physical and Chemical Information

Except for information on physical/chemical properties of a few commercial mixtures containing the alkyl phosphates included in the list of chemicals following Table 1 and melting point of triethyl phosphate (-56.4° C), tris(2-butoxyethyl) phosphate (-70° C) and tris(2-ethylhexyl) phosphate (-90° C) (Ref 35, Sax and Lewis, 1987), octanol-water partition coefficient of triethyl phosphate (6.3; Ref. 14, Hansch and Leo, 1985) and Henry's Law Constant of triethyl phosphate (6.6×10^{-7} atm m^3/mol; Ref. 38, Wolfenden and Williams, 1983), the Committee has no information on measured physical/chemical properties of the alkyl phosphates included in the list of chemicals following Table 1.

Rationale for Recommendation

A. *Exposure information—Production/use/disposal/exposure/release.* The Committee believes that the alkyl phosphates included in the list of chemicals following Table 1 are commercially available and that many are produced in substantial quantities; actual volumes are CBI. The Committee recognizes that some of these commercially-available mono- and di-alkyl phosphates may be potential degradation products of di- and trialkyl phosphates included in the list of chemicals following Table 1. In 1977, many of the chemicals were produced in 1 to 10 million lbs/year quantities (Ref. 41, TSCAPP, 1990).

Many of the trialkyl phosphates are used as plasticizers, flame retardants, lubricant additives, and solvents, and are found in floor polishes (Ref. 29, Neal et al., 1986). The Committee is concerned that these uses may result in exposure. The other alkyl phosphates are used as extracting agents for actinide elements (di-*n*-butyl phosphate, bis-2-ethylhexyl phosphoric acid, di-*n*-dodecyl phosphate, and dodecyl phosphate), textile and paper processing compounds (methyl phosphate, *n*-butyl phosphate, and diisooctyl phosphate),

polymerizing agent (methyl phosphate, diisooctyl phosphate), chemical intermediates (methyl phosphate and phosphorodichloridic acid, ethyl ester), lubricating oil additives (2-ethylhexyl dihydrogen phosphate and 2-ethylhexyl phosphate), and rust remover and inhibitor (methyl phosphate and diisooctyl phosphate).

B. *Evidence for exposure—Human exposure.* Triethyl phosphate has been detected in drinking water samples in Canada that were drawn from the Great Lakes during a period from 1978 to 1983, in concentrations ranging from 0.3 to 27.1 ppt (Ref. 22, LeBel et al., 1981; Ref. 46, Williams and LeBel, 1981; Ref. 47, Williams et al., 1982; Ref. 23, LeBel et al., 1987) and in concentrations of 1000 ppt in Rhine River water treated by bank infiltration (Ref. 33, Piet and Morra, 1983). Tris(2-butoxyethyl) phosphate has been detected in drinking water samples in Canada that were drawn from the Great Lakes during a period from 1978 to 1983, in concentrations ranging from 0.4 to 5400 ppt (Ref. 22, LeBel et al., 1981; Ref. 46, Williams and LeBel, 1981; Ref. 47, Williams et al., 1982; Ref. 23, LeBel et al., 1987), and in concentrations equal to and less than 58.5 ppt in drinking water in Japan (Ref. 1, Adachi et al., 1984). Tris(2-ethylhexyl) phosphate has been detected in one of six drinking water samples in Ontario, Canada and in the raw water source during 1978–79 in a concentration of 0.3 ppt (same concentration in both samples) (Ref. 22, LeBel et al., 1981). None of the alkyl phosphates that have been detected in drinking water are approved as drinking water additives in the U.S. (Ref. 36, Saxena, 1990).

Triethyl phosphate has been detected (no quantitative data available) in food, predominantly in nut samples taken during a total diet intake study in the U.K. (Ref. 11, Gilbert et al., 1986). The food daily intake estimate for tris(2-butoxyethyl) phosphate from a 1982–84 market basket survey varied from 2.9 to 16.8 ng/kg body weight per day depending upon the age group (Ref. 13, Gunderson, 1988). The food daily intake estimate for tris(2-ethylhexyl) phosphate from a 1982–84 market basket survey varied from 23.2 to 71.0 ng/kg body weight per day depending upon the age group (Ref. 13, Gunderson, 1988).

Tris(2-butoxyethyl) phosphate has also been detected in concentrations of 4 to 25 ng/m^3 in the aerosol particle fraction of indoor air in 1981–82 (Ref. 44, Weschler, 1984; Ref. 45, Weschler and Shields, 1986), which was thought to have arisen from floor finishes (Ref. 10, Gasking 1988). Tris(2-ethylhexyl) phosphate has been detected in concentrations of 6 ng/m^3 in the aerosol particle fraction of indoor air in 1981–82 at 7 different offices, but not in outdoor air taken at two of the sites (Ref. 44, Weschler, 1984; Ref. 45, Weschler and Shields, 1986).

Tris(2-butoxyethyl) phosphate was also detected in 64 out of 160 human adipose tissue samples taken in Canada (concentrations of 0.7 to 142.2 ng/g) (Ref. 21, LeBel and Williams, 1986; Ref. 24, LeBel et al., 1989). It has also been qualitatively detected in cigarette smoke (Ref. 38, Schumacher et al., 1977).

The National Occupational Exposure Survey (NOES) conducted during 1981–83 by NIOSH estimated that 5,855 workers were potentially exposed to triethyl phosphate; 225,008 workers were potentially exposed to tris(2-butoxyethyl) phosphate; 1,209 workers were potentially exposed to tris(2-ethylhexyl) phosphate; 7 workers were potentially exposed to di-*n*-butyl phosphate; and 7 workers were potentially exposed to *n*-butyl phosphate (Ref 30, NIOSH, 1989).

Environmental exposure. Triethyl phosphate has been detected (0.1 to 11.8 ppt, 1982–83) in raw water drawn from the Great Lakes (Ref. 23, LeBel et al., 1987), in 2 out of 5 samples from North Carolina rivers (no quantitative data given) (Ref. 3, Dietrich et al., 1988), and in 11 out of 23 sediment samples (0.85 to 8.5 ppb in 1982–83) taken from a fjord in Denmark (Ref. 20, Kjolholt, 1985). It has also been found in a number of groundwater samples (1 to 10 ppm in 1 of 5 samples obtained from a sanitary landfill in Denmark; Ref. 37, Schultz and Kjeldsen, 1986) (10 to 15 ppb in samples taken underneath a landfill in Waterloo, Canada; Ref. 34, Reinhard et al., 1984) (0.3 ppb in groundwater underneath a landfill in Norman, OK; Ref. 5, Dunlap et al., 1976;). Triethyl phosphate has also been detected, not quantitated, in ambient air samples from Japan (Ref. 15, Haraguchi et al. 1985).

Tris(2-butoxyethyl) phosphate has been detected in a number of surface waters including the Delaware River (0.3 to 3 ppb) (Ref. 39, Sheldon and Hites, 1978; Ref. 18, Hites et al., 1979), the Weser River in Germany (125 ppb) (Ref. 2, Bohlen et al., 1989), and river water from Osaka, Japan (0.01 to 0.08 μg/L) (Ref. 18, Kawai et al., 1985). It has also been detected in a number of industrial effluents at concentrations of 7.3 to 1607 μg/L (Ref. 29, Neal et al., 1986).

Tris(2-ethylhexyl) phosphate, besides being detected at 0.3 ppt in raw water drawn from the Great Lakes (Ref. 22, LeBel et al., 1981), has also been detected in river water samples from Osaka, Japan (0.33–1.9 ppb) (Ref. 18, Kawai et al., 1985) and in one of three rivers in Germany (1–5 ppb) (Ref. 43, Weber and Ernst, 1983). It has also been found in samples of 32 different industrial sources in Japan (no quantitative data) (Ref. 17, Ishikawa et al., 1985).

I. Chemical Fate Information

Except for chemical fate information on commercial mixtures containing alkyl phosphates, shake flask and semi-continuous activated sludge biodegradation test data for tris(2-butoxyethyl) phosphate (Ref. 27, Monsanto, 1983), the Committee has no chemical fate information on the alkyl phosphates included in the list of chemicals following Table 1. Chemical fate testing is recommended because there are insufficient data to reasonably determine or predict physical/chemical properties and persistence.

II. Health Effects Information

No health effects testing is recommended at this time. The Committee recognizes that a number of short-term health effects tests have been conducted for many of the trialkyl phosphates (Ref. 8, Eastman Kodak Co., 1984; Ref. 40, Smyth and Carpenter, 1948; Ref. 26, MacFarland and Punte, 1966). Compounds tested for subchronic toxicity include triethyl phosphate for which there are two dietary studies available (Ref. 12, Gumbmann et al., 1968; Ref. 32, Oishi et al., 1982) and tris(2-ethylhexyl) phosphate for which there is a National Toxicological Profile (NTP) prechronic gavage study (Ref. 31, NTP, 1984), and an inhalation study (Ref. 26, MacFarland and Punte, 1966). Tris(2-ethylhexyl) phosphate was tested for chronic toxicity/carcinogenicity (Ref. 31, NTP, 1984). Triethyl phosphate was also tested in a one generation study for reproductive toxicity (Ref. 12, Gumbmann et al., 1968). Triethyl phosphate was tested for genotoxicity (Ref. 7, Dyer and Hanna, 1973; Ref. 42, Voogd et al., 1972; Ref. 7, Dyer and Hanna, 1973; Ref. 4, Degraeve et al., 1984; Ref. 9, Epstein et al., 1972; Ref. 8, Eastman Kodak Co., 1984). Available information suggests that some health effects testing may be necessary, but before testing is recommended, the Committee wants to examine any additional information that is submitted in response to this Report.

III. Ecological Effects Information

No ecological effects testing is recommended at this time. The Committee recognizes that acute LC_{50} values are available for triethyl phosphate for freshwater and saltwater

fish (Ref. 8, Eastman Kodak Co., 1984; Ref. 25, Loeb and Kelly, 1963; Ref. 19, Knie et al., 1983). The Committee also recognizes that LC_{50} values for tris(2-butoxyethyl) phosphate are available for fathead minnows and daphnids (Ref. 28, Monsanto, 1985). The Committee recognizes that trialkyl phosphates may have a different mode of action than mono- and di-alkyl phosphates which may act as surfactants in acute toxicity tests. Available information suggests that some ecological effects testing may be necessary, but before testing is recommended, the Committee wants to examine any additional information that is submitted in response to this report.

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federal register

Tuesday
June 5, 1990

Part VI

Department of Transportation

Discovery Airways, Inc. and Mr. Philip Ho; Prehearing Conference; Notice

DEPARTMENT OF TRANSPORTATION

[Docket 46760]

Discovery Airways, Inc. and Mr. Philip Ho; Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on Tuesday, June 5, 1990, at 2 p.m. (local time), in room 5332, Nassif Building, 400 7th Street, SW., Washington, D.C., before Administrative Law Judge Ronnie A. Yoder.

Dated at Washington, D.C., June 1, 1990.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 90-13163 Filed 6-4-90; 9:54 am]

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Federal Register

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Tuesday, June 5, 1990

INFORMATION AND ASSISTANCE

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